

**Probation Services Task Force Meeting Minutes
Judicial Council Conference Center, San Francisco, CA
September 12-13, 2002**

Task Force Members Present: Hon. Patricia Bamattre-Manoukian, Hon. Irma J. Brown, Hon. Denny Bungarz, Hon. Trish Clarke, Mr. Alan Crogan, Mr. William Davidson, Hon. Ronn Dominici, Ms. Sheila Gonzalez, Mr. Michael D. Johnson, Mr. Phil Kader, Hon. Kevin M. McCarthy, Mr. Paul Nicolosi, Hon. Frank J. Ochoa, Mr. Michael Roddy, Mr. John Wardell

Task Force Members Not Present: Hon. Steven E. Jahr, Mr. Bill Mahoney, Mr. Ralph Miller, Hon. John Tavaglione

AOC Staff: Ms. June Clark, Ms. Audrey Evje, Ms. Allison Schurman

CSAC Staff: Ms. Elizabeth Howard

CPOC Staff: Ms. Norma Suzuki

Welcome and Introductions

- ❖ Welcome was extended to Mr. John Wardell, Chief Probation Officer of Butte County.

Task Force Timeline

- ❖ The November 7-8 meeting is a critical meeting. We are going to talk about the long term governance model. We are at a point where we have to address many issues and complete our work. If we don't have representation from probation, courts and counties at our next meeting, it will be very difficult to talk about long term governance.
- ❖ November 7-8 in San Francisco we will be finalizing our recommendations on a long term governance model and after that we will be writing the report. We can make revisions later on but this is what is going out statewide and this is what people have been waiting for since the inception of this committee.
- ❖ Our timeline is as follows: we are meeting today and tomorrow and you have your agenda, November 7 and 8 we will be finalizing all recommendations and working most of the time on long term governance model. February 6-7 we will be meeting in Burbank and we will be reviewing the draft report that Audrey and others will begin writing after the November meetings. At the November meetings we will ask for volunteers to assist with the writing, reviewing and working with Audrey and Liz. Bill Davidson has already volunteered. We will need at least one

person from probation, county government and the courts so that we have the perspective of all constituents.

- ❖ We will send the report out for comment after the February meetings. It will circulate from February 17 to March 21. We will ask for comments, get comments back, review the comments and then we will meet in San Francisco on April 3 and 4 to revise and finalize the report. Revisions will be made thereafter. In June we will meet to approve the final report which will go to the Judicial Council, the legislature, CSAC and the Governor. Our meeting in June may only be a one day meeting. If we have got all of our work done, I can't imagine that we will need to meet for two days. So we will ask you to look at your calendars to see which is the best day for you.

Technology Working Group Report: Ms. Sheila Gonzalez

- ❖ The technology working group has been working very hard and we have total agreement on what we want to talk about today, as you know the agreement is simple because there is one person on the committee and that is me.
- ❖ What I have done is ask Allison and Audrey help me gather information. We put out a survey to people across the U.S. to find out if there are any statewide probation systems in other states. The response was not good. I think more importantly I have told you in the past that I am very involved in technology and I sit on several national committees regarding technology. At a meeting that I attended, a report was given by the DOJ at the federal level and they were talking about a probation task force at the national level that is working on standards for technology systems, case management systems for probation across the U.S. The person went into great detail about the work that is being done. I was thinking this was wonderful because somebody else can do the work on technology for us. We can wait and get their standards and hopefully incorporate that into our product, but at a later date because we have other priorities that we need to work on such as who is going to run probation. At least we know that there is a lot of work going on in this area. For the court system, there were national standards developed that we have been incorporating into local and statewide systems. I just felt that this was a wonderful opportunity. Since then Audrey has contacted the individuals overseeing this project. They met yesterday and will be reporting back to us on this progress. We will be getting updates from them. Under this budget crisis where people's time is valuable, there is no sense in us doing something that we don't need to do if we can get the work done by experts from across the U.S. and then use that as our base. That is my recommendation that we follow the work of this national task force.

- ❖ Who is on that task force? Probation people and others from across the state, the APPA. At our first meeting Carl Wickland, the APPA executive director, presented to us on the national probation white paper.
- ❖ Am I hearing that there are people from California on this task force?
- ❖ I don't know. We are going to be talking with this group and I'd like to make sure that there are people on this task force from California.
According to the gentleman from the DOJ, he led me to believe that there was but I can't identify who that is. He was very supportive of what we are doing and very convinced that the work that they are doing will be relevant to us.
- ❖ The reason that I bring that up is that I think one thing we have found in doing these studies is that no state is like California. If they are putting something together and California is not involved then it may not fit.
- ❖ It is interesting, I think we are unique regarding this governance issue but when it comes to what people do in probation it is more similar across states. What I'm hearing is that probation is responsible for the same kinds of activities nationwide so I would think case management standards would probably be something very viable that we can work from.
- ❖ Does that sit well with everyone?
- ❖ Our recommendations from the first report, Recommendation 6: probation technology resources should be reconfigured and augmented to enhance statewide communication and improve operational systems, resource allocation, and capacity for evaluation. Recommendation 7: Probation departments should develop assessment and classification systems and tools as part of an effective case management strategy.
- ❖ It sounds like this is what they are doing.
- ❖ This gentleman mentioned that part of it is statewide systems, the ability to move information across county lines.
- ❖ Your recommendation is that we follow the work, identify it, discuss it in the report, and that instead of reinventing the wheel we either work in conjunction with them or wait until their review is done and then determine how that would apply to California.
- ❖ We may not get to this tomorrow, but there has been a suggestion that a probation services advisory committee be formed to continue the work of this task force. One component of that would be technology so we could tie in recommendations that would address the ongoing work of this group so we can benefit from their work and so that the probation services advisory committee can follow up and continue their work, so that we wouldn't drop this issue at the conclusion of this work.
- ❖ You know, it really is imperative that someone in California be on that group.
- ❖ We will follow up on that.

- ❖ At our November meeting we will have a technology update concerning an identification of the group, what they are working on, what their goals are, and if there is not a California involvement can one be included.
- ❖ CPOC is involved with APPA and Chief Price is involved. If there is some assistance you need, you can conduit through me or contact Chief Price directly.
- ❖ Let's see how Audrey and Allison do first.
- ❖ We also have a standing advisory committee on technology that is a standing advisory committee to the Judicial Council. So, keeping that in mind, there are a lot of resources available so we are not duplicating efforts. I think this makes a lot of sense in terms of waiting to see what this group comes up with.
- ❖ And I never dreamed that we would be recommending what kind of technology, what vendor and all of that. I think having standards available that people can build on is what most of us were looking for.
- ❖ Is everyone in support of Sheila's recommendation in terms of technology?
Yes.

Model For Appointment, Evaluation, Discipline and Termination of the Chief Probation Officer

- ❖ I thought what I would do is ask Audrey to talk about the process then I want to share with you some issues that are going on statewide.
- ❖ The first step of our outreach effort was to send out this letter on July 16 for one month of comment. It was mailed to the presiding judges of the superior courts, presiding judges of the juvenile courts, chairs of the board of supervisors, court executive officers, county administrative officers, and chief probation officers. In addition to this letter I also attended a number of meetings to answer any questions about this model. In early July, I attended the chief probation officers meeting, that comment is number 49. We spent a lot of time discussing the model and how it will function. I also attended the Criminal Law Advisory Committee to the Judicial Council, which Judge McCarthy serves on. They didn't formally make any recommendations, but after a bit of discussion it became clear that all of the different views were represented in that room. There were some that felt it was a compromise position, others felt strongly that probation belonged with the courts, and others felt that the supervisors have a strong position that the board might be the appropriate entity for probation. It was a microcosm of a lot of what we have discussed over the last couple of years. I also attended the Judicial Council's Family and Juvenile Law Advisory Committee, Juvenile subcommittee meeting and interestingly enough, they recognized it as a compromise and felt that it was a very good model although they did feel that it should be a standing committee and the juvenile court presiding judge should be one of the sitting members. But on

whole they felt that it was a decent compromise given all of the issues raised. I also attended the SCOPO meeting. They are a line officer's association. There were about 20 people attending that meeting each representing a different county. We did have a discussion, they represented the view that Paul raised at our last meeting that if there is a committee, they would like to see a line officer serve on that committee. I explained some of the concerns that this group had with that. Then it was raised that perhaps if not serving on the committee they could at least have a role in evaluating applications or interviewed getting some information on the candidates. I also attended the court executives committee and the presiding judges executive committee. Those comments are contained in the comments and as you can see they were generally not supportive of the compromise position.

- ❖ Audrey did incredible outreach and people are feeling as though they are being heard. The document that went out for comment is extremely well done and put together collaboratively by Audrey, Liz, myself and others. Whenever we send out a document we try to explain why we are doing this and why we need a response. This particular document was very well done. It generated more response than our interim report generated. We have 71 comments and for the interim report we received 43 comments. This is of great interest and people took the time to meet and discuss it. We will be going through the comments in your binders. There were some wonderful comments and great observations. In reading this binder, it again reminded me how exciting and cutting edge the work of this committee is.
- ❖ I wanted to set the framework for our discussion today by sharing with you some of the Chief Justice's remarks that I heard at another meeting. I think that the Chief's remarks apply to what we are doing here. Years ago when I started working on committees everyone said court unification would never take place, especially Los Angeles. In the last few years, since 1996, it is unbelievable what has happened in the state of California. We have unification, we have court employees funded by the state, all of those things that people said would never happen, have happened. That is a lot of the reasoning behind the regionalization. To provide support, because you now have the state funded employees and if you need assistance, you have a lot of assistance going to the trial courts. As we talk later about probation employees becoming court employees, if that is the direction of the task force, a lot of the issues relating to court employees have already been grappled with. There is a bill pending now on facilities, I'm not familiar with it but it looks like the state will be taking over the court facilities.
- ❖ The bill is on the governor's desk. It begins the process of transferring ownership of the trial court facilities from the counties to the judicial branch at the state level and adopts the recommendations that came out of the facilities task force, the details of which I am not familiar.

- ❖ There is a phasing in and an agreement by the counties and the courts as to the status of the building, there are countless recommendations, it is very complicated but some facilities will be transferred and some will not. Most of what takes place is through a collaborative approach with the counties and the courts agreeing on what goes forward. It includes an increase in fines and fees. That would be dedicated to this in a pool of money where it would be prioritized as to who would get the next new facility. It is certainly a model on how people have come together to solve a major issue. Now, as we all know the financial state that we are in now, the money part doesn't kick in the first part is transfer of the facilities but there is no money attached to it at this point.
- ❖ It is a three year phase in process so the soonest it would begin is 2004. There is a transition period. It sets up a governance model much like what we are looking at here. Everything is negotiated at the local level. It sets up an important governance structure and procedures for transferring responsibility.
- ❖ These facilities are now owned by the counties.
- ❖ A lot of them, 80%, are mixed use buildings.
- ❖ This is work that has been ongoing resulting in legislation that is on the governors desk addressing facilities issues, which is huge for our task force. So we have the work of the court employees task force, and they were able to satisfactorily resolve and address the many controversial issues they had by a lot of compromising. Not everyone is happy. That is what came out in the regional meeting, too, and I think we have realized that in our work. There are problems and issues that have to be worked through. That is why we have regions and have people like Sheila and Mike, and Chris who are people known by all of the court executive officers and most of the judges. If there is a problem, they can call them. We have already had the court employees task force, the facilities task force and another interesting bill that is pending that we don't have to go into in depth, but it is another controversial area, is the court interpreters bill which is also related to what we are doing.
- ❖ That bill directs the courts to offer court employment to interpreters who are now independent contractors. There is a narrow exception to that for interpreters with a certain amount of tenure who don't want to become court employees. That was a bill that the Judicial Council was dragged kicking and screaming to the negotiating table. We did end up supporting the bill because of the need to mitigate the harm and damage of a lot of the initial provisions that were in the early version of the bill and in order to get the compromises that we had to have, it took a lot of delicate negotiations. One of the conditions was that the Council support the bill.

- ❖ And, it also always relates back to some other things because the individual who sponsored that bill is also the individual sponsoring the court facilities legislation. So, politics played a role.
- ❖ That really informs us in terms of any legislation that we are going to be proposing. I think that for anything we recommend, what it looks like now is going to be different when it gets through the process.
- ❖ The two bills that you mentioned left a lot of very difficult issues off the table. The legislature took the easy ones and I think you would all agree with that. So that may be a lesson to us, that it has been my experience that the hard issues were left to someone else.
- ❖ Do you have an opinion as to whether the governor is going to sign these bills?
- ❖ We don't know on either one. I suspect he will sign the interpreter bill, that is based on educated guess. The governor has strong labor support and that is important to the governor.
- ❖ If it is signed, the courts are going to pay for the benefits, etc.? The courts will take care of all of that?
- ❖ Yes.
- ❖ The thing is that there are different factions. There is a group of interpreters that adamantly oppose this and another that wants it.
- ❖ How does this relate to the work we are doing here? Let me bring you back to my starting point. The changes California has seen in the last eight years are phenomenal. My thought is we need to think long term, especially since we are in a budget crisis right now. Whatever recommendations in the report, long term recommendations, they have to take into consideration the concerns of all those that are involved in the process so that even though there is no money now, that should not preclude or stop us from thinking long term about what is best for the state of California like all of these other task forces looked at. We are trying to look at what is best for probation as it relates to everyone in the state of California, the delivery of services, the probation officers who are employed, the courts who rely on the probation department and the counties as they are involved in the many aspects. I think we need to think long term. And we need to think about how change is taking place and how much work is already done that we don't need to repeat. In the state of California right now, we have 58 counties, of those 10 or 11 are charter counties but not all of them opt.
- ❖ Los Angeles is one that has and it is the big fish.
- ❖ There are a few that defer to general law as their charter provision.
- ❖ We have in place a lot of support in terms of the courts for assistance on all of these issues through the AOC through the regional offices, and there has been more dialogue going on in the last 8 years than I have seen in the last 20 years. All of the presiding judges are now talking, at this meeting they are even bringing the assistant presiding judges to enter the discussion so

that when they become the presiding judge they are informed. It used to be that a new presiding judge would come in and they wouldn't know the issues so the court would be heading in one direction and then someone else would come in and it would go another direction. We have a lot of dialogue and continuity. The court executive officers are talking, they have an advisory committee. Years ago when I was on CJER the decision was made that education was for all court staff not just the judges, so you have the court executive officers who are now talking. It is a lot of the same people talking about all of these issues. In the comments, I see much of that same discussion coming back. It is very encouraging to see the amount of dialogue that has gone on between the judges, probation, and counties. It was encouraging to see that there is a lot of collaboration already going on. I think that the recommendations from this task force should encourage and support the process, we don't want to bring things to a standstill in any county in the state of California. And, since my name is on all of these things that go out, and I'm getting all of these letters back from people that I have known for years saying thank you very much for all of the outstanding work you are doing we appreciate you looking into these difficult issues but the judges have all met and we strongly oppose the recommendation. That is not just the judges. There is opposition coming in from all over. I think we have to be cautious in our work. We have long term recommendations that will be done in February. We have five months and we will have our final report with the long term governance model, having carefully considered all of the comments that came back. The comments were very helpful, insightful, and constructive. People took a lot of time and even suggested language. That brings me to the question, which is basically what direction does this committee want to go? I wanted June and Liz to address why we need interim legislation now, if we absolutely need it now, can it be by way of pilot programs in various counties, those counties that are in support of this recommendation and want to pilot it. Or, since our report is going to be essentially concluded at the end of our November meeting, we are going to have our long term governance model and we will have our report, is this something that you still feel is very essential and if so why.

- ❖ Even if our report goes out, I don't suspect we are going to have a legislative package to codify those recommendations in an immediate sense, I think that is going to be another 12–18 months. In the meantime, the risk of not having interim legislation is one of the ways in which we have kept other interested parties indicated to the commitment of our process and finding a solution is that we are going to have an interim model for the appointment process. I think if we don't do that in the 2003 legislative year what we are going to see is another round of bills that are introduced to do something else that is not what the task force wants. If

collaboration is our buy word the best way we can do that is to suggest a collaborative consensus model which may not be the model that we are looking at today and I think, frankly, what we will need to do is tease out some key issues from what the comments have indicated and come up with something that does satisfy everybody. I don't think that we should suggest interim legislation that will codify what we have proposed in our July 16 memo, because I don't think that will be universally accepted. What I do think is that we need to develop a model that would be universally accepted by taking many of the good recommendations that we got and figuring out a way to address those issues. On the pilot program question, I think frankly that is what was suggested in the legislation that was introduced this year, to pilot a governance model in two counties. And the legislature did not accept that, they said you need to wait for the probation services task force to do their work. Maybe they would have a different view if it was coming out of the Probation Services Task Force but I just don't see the value in piloting something that counties that already accept it. I don't see how that brings on counties that oppose it in the first place. The issue about the report being at the end of June, I think that there will still be an enormous amount of work that has to be done to process the concepts in the final report into some sort of legislative package and we need to be working on something in the interim. Having that gap is just too risky because people will introduce bills in January and we will be fighting them for six months and that will detract from the work we are trying to do.

- ❖ I agree with everything that Liz said. I agree that we need to do something legislatively in 2003. I agree with every statement you made except I would make one tiny modification, that is I am less confident that it is even possible to develop a proposal that is universally accepted. I would just change the word universally or maybe say universally palatable. We will never get universal acceptance. I don't think we did with any of these issues, trial court funding, facilities, etc. I would be comfortable going forward to the legislature with something short of universal acceptance.
- ❖ Going through these 67 responses, I found that the chiefs made 19 responses plus the position that we took for the state association, which was the work of 25 chiefs. The next highest number of responses is the judiciary, with 18 of which 12 are compromises. The board of supervisors had four supports, judges had three and the CAO's had seven. The next most responsive group were CAO's with seven support, five compromise, with four opposed. The point of it all is when you take all of the numbers and mix it all together, basically no one likes any model that exists, they want a compromise of some sort. The trial court presiding judges who opposed it outright as well as the CEO executive committee said do the best you can, if it doesn't work we will put together a default model.

- ❖ What they said was the executive committee also recommends that statute would be indicated that if counties and courts fail to develop this model, a default model be developed would be imposed.
- ❖ They meant a default model developed by this group to be imposed via statute.
- ❖ Most of the compromise jumped all over the place. They talked about stonewalling, impasse, and that was our concern as chiefs. It said three county representatives. Our experience has been that the CAO or chairman of the board, what he would pick or she would pick would be the director of the department of human services and maybe the park or recreation, general services director that they have the best relationship with that they can control their votes. That is why we became very specific and said they will be supervisors and judges. That avoids the stonewalling and impasse. At the chief's meeting which was Monday and Tuesday of this week, they prefer to stay with the existing model general law style of appointment work directly with the judges, probably the strongest letter in here is from Stanislaus where the presiding judge said not only no but hell no. I can evaluate, discipline, hire, and terminate.
- ❖ The problem is can you pay.
- ❖ The reality of the 25 chiefs that got together was to recognize that there has to be a fair model and we feel this is a fair model (the CPOC model)
- ❖ That is the way that has always been.
- ❖ The final tally is that more than one third recommend a compromise.
- ❖ The consensus of the group is to move forward to develop a recommendation for legislation which would be universally palatable to all involved. Understanding as we go through the comments that there is a strong opposition from many of the individuals who responded.
- ❖ I'll have Audrey go through the comment charts.
- ❖ There are a number of issues and questions raised by numerous commentators and I think that if we go through these it will summarize a lot of the concerns about our model.
- ❖ Audrey is going to read us an outline of the general areas of concerns raised and then we can go back and try to tease the model to find a model that would be universally palatable.
- ❖ This is not every issue raised in each comment. There are 71 comments some of which are included in some other discussions that we may have already had. The first is the question as to whether this is an advisory or stand-alone committee. Basically, does this committee appoint the new chief probation officer, etc. or does then the board of supervisors have a resolution and the court has a court order. What is their role? Related to that is how strong should the legislation be regarding the committee. Should there be legislation mandated to make this a standing committee or should it be an ad hoc committee formed for appointment, annual evaluation,

discipline, and removal. Do we want the structure to have more flexibility in terms of having subcommittee or having this committee conduct a full evaluation of the chief probation officer or can we just have everything left to local discretion?

- ❖ When you say this committee you are speaking of ..?
- ❖ The proposed committee. Whether or not the legislation will say this is a standing committee and this full committee will do “x”, “y”, and “z” or whether or not we form parameters and leave it to local discretion.
- ❖ There are some Brown Act issues, also.
- ❖ Questions as to who would serve on the committee. Who would select the representatives for the court and county? Should it only be judges and board of supervisors? Should the juvenile court presiding judge be a member and then Brown act issues were raised by a number of commentators.
- ❖ Questions as to the role of the juvenile justice commission. What role should they play? Relating to that question, is the recruitment process. Should line staff be involved. Should they follow county processes for recruitment unless the court does not agree or should there be a different structure for this group. What about termination? Should termination be at will or for cause? Issues related to the peace officer’s bill of rights and due process issues therein.
- ❖ Questions about the liability. Would it be equal liability. Is it limited to actions of the chief probation officer him or herself? Questions about litigation costs and other expenses related to any litigated matters. One comment, if proven that it was the responsibility by support of the county it should not be shared liability.
- ❖ Questions about charter counties. Does it apply to charter counties?
- ❖ Questions as to charter counties that reference WIC 270 as part of their charter, will we be revising 270? Counties that have a merit or civil service system, so though they are not charter counties have a different system for their chief probation officer, how would we be revising this? Would it be the penal code, the WIC code, or both? I think we need to work through that. The operative date? Should chief probation officers be grandfathered in for appointment and then for evaluation, discipline and removal? Should there be a sunset clause if it is an interim model?
- ❖ Questions about minimum qualifications for the chief probation officers. How should an evaluation be handled? Issues raised by supervisors as to supervisors generally deferring that responsibility to maintain objectivity. Some issues about committees not evaluating an individual and whether or not the county format should be used unless there is an objection. Issues about whether or not the chief probation officer’s salary should be shared or to clarify, remain a county expense.

- ❖ A question about what to do about an acting or interim chief probation officer while pending appointment if this group is trying to reach consensus and it takes a bit longer how do you set up an interim chief? Should this be a consensus model that we recommend or should this be a default asking local jurisdictions to develop their own collaborative models and then the question already addressed should we pilot court responsibility?
- ❖ Some clear themes that came through as I read the letters include the fact that the recommendation was quite controversial, there is a lot of opposition but there is also a lot of compromise. It seemed as though some of the themes were a desire that the legislation provide clear lines of control and authority and responsibility that it permit local flexibility, that it consider the grandfathering in for protection purposes for current chief probation officers. That what to do in the event of a tie be spelled out. If everyone takes positions consistent with the groups they are representing, and you have a tie, how do you resolve that and could you please be clear in the legislation. Many of the letters suggested outright that the authority and control of probation should be shifted to the state and the courts. Some of the letters say if you are not going to move it to the state or the court, it should be moved to the county so there are clear lines of authority, direction and supervision. Those are a lot of the themes that I picked up. Did anyone identify other themes?
- ❖ I thought one of the other things that was clear was that they did have an understanding that there should be a blend of responsibility between the judiciary and the board of supervisors. Either they pointed it out as a fiscal issue or they looked at it from “they work for me they provide me with a service”. It did come across loud and clear I thought that they did understand the issue and that there did need to be a compromise on how the composition would be arranged.
- ❖ I got the impression that they pretty much would like to keep it status quo for most places because it is not the majority of places that are having the problems. It might be a handful, but most people were satisfied with what was happening in their own environment.
- ❖ I have a threshold question. Does the task force believe that of necessity we must recommend the statewide model?
- ❖ What are the alternatives if we don’t recommend a statewide model?
- ❖ Maybe a local control with a default as the presiding judges suggest. And I ask that only because I think that if we have consensus on that, that will take us in a different direction rather than trying to work through all of the problems with this model. If we agree that this model isn’t going to be the one we recommend, then perhaps our time is better spent talking about what would be more generally palatable than this.
- ❖ I wanted to go back to the comments from Liz and June that we started with about whether or not we needed an interim model. I certainly understand

- from their perspective why we need to do that but picking up on something that Liz said in terms of how we work with an interim model, how long is interim because I see it taking the same amount of time to implement standards and guidelines and make an interim model work as it would to make the final model work. Since we are so close in time, if they are not pretty close together I see it as a long period of confusion and adaptation. You get one thing implemented and running smoothly and then the long term model comes out and it starts the shift all over again. That is going to create a lot of uncertainty and maybe chaos and maybe people will be less receptive to the final product because it is requiring them to do other things to make a change when they didn't want to make a change in the first place. I just have a concern about how we work that out. In response to your last question, I think yes if we are going to do something that represents a statewide task force then it has to have statewide ramifications.
- ❖ Specifically then if ultimately in November the task force recommends that probation go to the courts, not talking about facilities at this point, just talking about the employees, if those go to the court and/or there is a recommendation that everything go to the court then that will affect the hiring, supervision and termination of chief probation officers and a likely recommendation to follow might be that whoever has that person as an employee and will hire and pay that person. If that is a possible recommendation as to court employees, probation officers who work for the courts and the facilities, your concern is that if we have an interim piece of legislation that is going to be very different from the ultimate recommendation, and then in February we send out a report recommending something different, then we have given them conflicting information in a four month period. I think that is a real serious issue that we need to talk about today.
 - ❖ I apologize for not making the last meeting where you embarked upon this process. I need to relate that Judge Jahr contacted me and wanted to express his concern about the model and the potential unworkability of equal representation on a committee. That may be full collaboration but it may not be completely workable. In thinking about this proposal myself and considering the legislative proposals that the counties made about shifting the power to the board, I wonder how long range looking that is. I think we have all kind of come to a consensus that in the long term there may be greater viability to have a structure that is connected with the state as opposed to the counties for the good of probation overall. If on some kind of an interim basis, the model the two counties suggested occurred I would suggest that you are buying probation lock, stock, and barrel forever. The dynamic tension that exists now because we have this problem related to fiscal responsibility and hiring authority would be gone. That tension would be eliminated. Those counties that are suggesting that kind of legislation I

- would ask, are you ready to take on probation forever and have it be yours or do you recognize the value in having a long term goal of shifting probation to the courts under a statewide model. If so, that is probably too big a bite to take right now. I think it is arguable that this proposal is too big a bite to take. The state may say that the issue is resolved. The tension is gone. They have agreed to work together. Whether it is workable or not, it may be viewed as a solution to the issue. I think a smaller step might be more in order as an interim measure to resolve the concerns of the counties but keep it on track in terms of a possibility to have a recommendation for a state model. If the concern is liability because some judge unschooled in personnel practices might make an untoward decision that results in county liability, let's look at ways to deal with that. Perhaps having under the current system, any negative personnel action or termination had to be approved by the county personnel director. If the counties want to make sure that the chief probation officer is not going to get them into trouble in terms of their personnel structure and issues that have a measure to include county participation, board or some other level, on a hiring and selection process. You don't have to have this joint committee structure necessarily to make it collaborative to the point where you can address the concerns that are being raised. I would suggest that if you go too far now, as Irma pointed out, in one direction it is going to be hard to shift if you have an ultimate long range recommendation that goes in a different direction.
- ❖ It has been so long since we started this process that you sometimes lose track of why you are here in the first place, but is it not correct that the main reason this whole thing started was because some judges did make some decisions that ended up costing a couple of counties a whole lot of money. So your suggestion that before somebody takes such drastic action they work with the county human resources person makes so much sense it is just blinding. Really that is what got us all here. Somebody probably wasn't as versed in personnel issues as they should have been and made a bad decision.
 - ❖ It is easy to say that fiscal authority should go with hiring and that is not the way it is now. We can make it that way but we can only make it that way one way and that is why we are not in a position where we can shift fiscal authority to the state at this point. If we do it the other way it is done. You bought it. You got probation. I think a small step that deals with the issues you raised could be done and it doesn't have to be done in the charter counties. In those counties where the judiciary has the appointing authority, in regard to the liability concerns that the counties have I think those can be addressed in an interim way that doesn't completely dissipate the dynamic tension that exists that you need to keep a long range shift on track.
 - ❖ The judge in Lassen County had counsel from the personnel director.
 - ❖ The Lassen County issue is not what prompted the legislation.

- ❖ We were one of the counties that supported the initial bill that CSAC sponsored along with San Mateo and others. It wasn't because our judges were going off, it wasn't even directly related to our own chief probation officer, with some exception for several years there was less than total responsiveness on some management issues and some budgetary issues which got the department into trouble at the end of the year by going over budget and maybe not doing some things with technology and other stuff that upset the board in our office but we had no way of getting a handle on it short of penalizing the entire department by cutting their budget several hundred thousand dollars the next year. Who does that hurt? Well, the people that were in the system, the probation officers and we didn't particularly want to take that route, but we had no way of leveraging, enticing or hammering the chief probation officer. That is why we supported it.
- ❖ I thought it was the Lassen situation.
- ❖ No Lassen came later.
- ❖ It is just another manifestation of the same dynamic.
- ❖ We have an issue right now in Shasta County that I can't talk too much about it but it relates to the facility issue and the issue of maintenance and the death of a juvenile. You can watch as this unfolds because it is going to be an explicit example of the county's concerns about not being able to tell the probation officer what to do and have them do it.
- ❖ What Judge Ochoa is suggesting is maybe there is another model. We don't want to throw out all we have done here and we want to go through the comments because they are very helpful, that will be palatable that will permit these counties to have some control over the fiscal issue and have some involvement in the process that results in less liability for the counties. As I've heard you say before, you are not concerned about being involved in the process but if you have got to defend a lawsuit and you are on the hook and have no ability to supervise and/or control or have any input with respect to the chief probation officer, that is not acceptable.
- ❖ I like the idea of a transitional approach or an ongoing model whereby you ultimately will get to a goal because I think it is a big piece to bite off to get there immediately. Maybe some compromise in the beginning that ultimately shifts that responsibility one way or the other incrementally at the end of whatever we get to. Having been through a death in a juvenile hall... I arrived in Nevada County three months after there was a death in the juvenile hall. The liability for those types of issues obviously is very great but the liability for a probation chief is as great in a number of areas. One of them is the facilities. Ultimately, Nevada County prevailed over those lawsuits that also went local, federal, and back to local and they were dismissed. So I understand what you are going to be looking at and going through. It took at two year process for that to culminate with the finding

- being that there was no culpability. I just have a personal concern that is, nothing against local politics per se, but while I have been a chief probation officer I have gone through six board members and no change in judges. So I have a concern with stability of who I work for. If there is going to be a constant climate of change, that doesn't seem to occur in the arena of the judiciary the way it does in the arena of supervisors.
- ❖ Your remark is supportive of what Judge Ochoa said. A lot of people including judges like the status quo and would like to be primarily responsible for hiring and supervising but you recognize the concern of the counties in terms of fiscal responsibility and funding the operation of the probation department so that if this model is not acceptable, any model proposed has to have that component.
 - ❖ It may be that it becomes acceptable over time. If there was a shift, to the court for example, and the fiscal responsibility for that couldn't happen today but could happen gradually in some form or matter, would that be more acceptable to those in opposition to that.
 - ❖ I have some concerns about the legislative piece as the judges have pointed to, that we give them this piece now and a piece of legislation and very quickly follow it with a recommendation that may not look anything like this. I'm not convinced that we need a piece of legislation this year. I think that we soundly got trounced on this trial. That is my opinion. I don't think many people liked it. I think that those that were compromising were trying to be nice about it, but I really don't think a lot of people liked our recommendation and so I would prefer to go with what our goal is long term and recognize that this isn't going to happen overnight and start taking steps towards that so that five or six years from now when the finances are there, this is what it finally looks like.
 - ❖ What Judge Ochoa is saying is that if we ever compromise we are going to buy it?
 - ❖ No. I said that if the model became what the two counties proposed in terms of appointing, hiring, and termination authority going over to the board, if that is the direction statewide, probation is yours. Further, this collaborative model might be viewed by the legislature as a long term solution. They might say that the problem no longer exists.
 - ❖ I have to go with what Trish is saying, we have more oppose than support and compromise. I totally agree that they are just being nice.
 - ❖ What I would suggest, if we are going to look at an interim proposal, let's see what the county's concerns are. What is leading Riverside and San Bernardino?
 - ❖ What are the concerns? One is the bonehead judge that fires someone for no reason. Can we list the other concerns?
 - ❖ One of the big concerns is the termination piece where there is someone in place that the board is not happy with from a fiscal or management

- perspective and they have no authority to weigh in as to whether that person should be terminated.
- ❖ I think those are the overarching factors in both those counties.
 - ❖ Do you think Senator Brulte will be kind if we don't come back with a plan that gives him an option versus his legislation?
 - ❖ I'm not literally worried about Senator Brulte. The reason that I on behalf of the judicial branch feel the need to move legislation this year is because of my fear that if we don't there will continue to be these attempts to erode through the legislative process. Now, here is a thought if for example this group wanted to turn themselves into a SWAT team and every time there is a problem in a county until our transitional proposal or model is on the table and out there and you want to go to whatever county and to intervene and keep it from being a fight in the legislature, I would love that. I just feel that for the judicial branch, we are ever so slightly more motivated to prevent the legislative battles because it is we that have to go in and fight them. The county association does not. CSAC is not there in the legislature because it is a single county issue. That makes perfect sense to me. It makes perfect sense that you aren't going to oppose something that a member county wants to do. So, we have to oppose it on behalf of the judicial branch. My point is that I am looking for a legislative fix, I keep recommending it on behalf of the council in order to prevent those hot spots from cropping up and having to deal with it in the legislative process.
 - ❖ Do you have a proposal that would do that?
The SWAT team proposal?
 - ❖ No the legislative proposal.
 - ❖ That is the dilemma. That's where we started earlier in the day. If there is something that can bring the parties to the table which I at least individually would hope would prevent most if not all fires from erupting. To bring parties to the table and whether it is through locally developed model or something that this group develops, then...
 - ❖ I think the SWAT team idea is the best one.
 - ❖ I'm kind of serious about that. I mean I don't know how.
 - ❖ Can I understand the concern that the board might want to terminate a fiscally irresponsible chief probation officer? You control the budget. How can a chief probation officer get you in trouble?
 - ❖ Outspend his budget.
 - ❖ Regardless of the budget size any department head has to manage those resources. Obviously certain things are beyond control, colas and contract type stuff. Those should all be provided for in the budget unit. I can't give you specifics but whether or not you go off and purchase all of your fixed assets in the first quarter, how you approve overtime, there are various management decisions that a department head has to do throughout the year in order to end up hopefully with a balance at the end of the year rather than

in the hole. If they go in the hole, we are still going to pay the bills but then what are we going to do? Take from contingencies, another department? In our county we have a policy if a department head has problems they need to tell us at midyear. We evaluate it and take corrective actions. We look at it in third quarter, and take more corrective actions. If they tell us that everything is fine, and we don't take corrective actions, and they go over budget, our policy is to take it out of the budget next year. Who have we really hurt in that situation? The probation officers and the people they serve.

- ❖ Judges actions and the chief probation officers are saying that they have to do all of this because the judges are making me do this. How does it come back to this point?
- ❖ We all recognize and understand that as a basic premise probation services are under funded and all of these mandates which are mind boggling in terms of what probation has to do. I counted about half that our probation department is doing the other half they are not even doing. Why? Because they don't have the resources to do it. Probation is under funded. We recognize that. With present resources, they can't do these things. And there are the issues where the chief probation officer goes to the board and says I need money to do this, I'm mandated by state law to do this and you go through this whole process. Is there an example where a chief probation officer outside of that realm of realistic tension that we know is going to exist because that is the state of affairs where a probation officer has gotten fired?
- ❖ I think there are other scenarios where the county has been on the hook for settlements out of sexual harassment actions and I believe it was the chief probation officer, the county has no authority to take action but has to pay.
- ❖ So the chief creates a liability situation.
- ❖ Others can be hiring practices, promotional practices, I've heard allegations where a chief probation officer will have promotions of some and not others and it could be based on race, male/female all kinds of things and yet the county does not have any direct control over that. They are not the appointing authority.
- ❖ And there are issues of management where you have people that go on various types of sick leave and they are not being held accountable to come back. They stretch them out to go out on stress on you. Worker's comp claims. Populations you can't control.
- ❖ There are certain things that you have no control over. You have a serious rash of injuries in your facilities because you are overcrowded due to the rash of arrests that you have to detain. Judges are not over detaining but detaining for longer because they are more serious crimes and so the motion. You throw prop 21 in on it.

- ❖ Can that be resolved through an elaborate evaluation process? The ability of the counties to recommend that the judge with the authority take an action. Then if that judge doesn't and it results in liability, maybe the county is off the hook in that scenario.
- ❖ What you do is exactly what Mike says. You go to the CAO when you start to see the cost increases and where the costs are actually increasing are in the overtime side. Because you are going to pay those people you've got them on the books at their salary, it's the overtime that's thrown in behind them. The trick is to be able to get to the CAO and show them what is occurring and what options you are pursuing to control it. What Mike is pointing at is that some chiefs don't do that. They sit back and wait thinking that they will come out of the spin. And then you don't come out of the spin.
- ❖ It would have to be, honestly, we don't have a problem now that we have a mutual chief probation officer in our county. We do not have a problem and it is not because we have a new probation officer, it is because the presiding judge has a good common sense head on his shoulders and when I went to him several years ago and explained some of the problems in terms of management principles and participation of the department head, things of that nature and the judge took care of it. Basically, the presiding judge instructed the probation officer to be a team player, manager and so forth. So our problem got solved because our presiding judge helped to solve it. Including annual evaluations with me involved, etc. that is only working because the presiding judge made it work, but it could go away next year with the next presiding judge if he had a different perspective on things.
- ❖ That is what you legislate.
- ❖ That is what the concern is with not having a legislative fix is that there is nothing obligatory about it. I'm concerned even in counties now where it is working, if those relations sour, there is no requirement that they sit down and try to work it out unless you have something forcing them to do it.
- ❖ Questions after break will be: do you want to start going through the comments and try to work with the model that we have? Do you want to start with a softer model starting with what we have now and working from that point the thought being, I think that the county's position is very clear. Where there is fiscal responsibility there needs to be some involvement, some ability to enter the process. From the court's perspective, I think they have been pretty clear that they would like to keep the status quo. If ultimately this group is going to recommend state assumption and court responsibility instead of having an interim piece of legislation that is going to be in direct conflict with the ultimate recommendation. Is there a softer piece of legislation that we can suggest? Is this group ready to put our cards on the table? We have had correspondence going back and forth throughout the state. Everyone has read the interim report. They all sort of know the

direction of the task force. Is it time to put the cards on the table and say here is the work of the task force, here is the model that went out, here are all the concerns and issues we have identified, everyone will say good we have been heard, and at this point, in terms of a long term governance model the task force is considering and in light of that consideration makes an interim recommendation which would be supportive of that long term model which is like a little baby step that gets you there because Judge Ochoa raises a good point that I think the counties need to think about and that is how far into this process do you want to get if ultimately you are in support of state assumption and you would like to sort of back out of that. How far do you want to get in now to back out? I think Judge Brown and others have talked about how much of a conflict we want to create for the counties where we give them on piece of legislation and then four months later we say something different.

- ❖ I would like to say that this group really needs to get to the bottom line so you can come back to where the interim step is. If you don't have the bottom line you don't know what your interim step is. I just don't know how you can get to an interim step that isn't somehow going to be in conflict with what the bottom line is if you don't know what it is.
- ❖ We could go on doing this all day but the only thing that I have to say in response to that is I think we have agreed at one of our prior meetings that this interim step was not necessarily right in between where we are now and where we want to be. It's a resolution to an extraordinarily difficult problem that I think most people around the table agree that we need some way to get our hands around it for the counties in which this is a huge problem right now and it may not have anything to do with where we go ultimately and maybe I am a pessimist but I think where we go ultimately, though we may have consensus on where that is we are not going to get there for a very long time. I think we are at the beginning of trial court funding in 1981.
- ❖ And we are still working on the trial court funding issues.
- ❖ I just think that we are a long way from having a statewide model even though that may be our ultimate recommendation.
- ❖ The counties are saying they don't want fiscal responsibility, we don't want liability for probation officers who make bad hiring decisions and who don't supervise people and maintain halls properly so that juveniles are dying. They are saying we don't want fiscal responsibility, we don't want liability, those kinds of comments factor into what Bill said, which is that the long term model has got to be considered in what is done with the interim piece, even if it is not finalized. Because you don't want to change the process in every county just to go back to what they had in place. So the question is can we work on the liability and fiscal issues and factor those in

some how without upsetting every single county. The judicial council all of whom have opposed this model.

- ❖ They also opposed the facilities portion of a long term model if that is the way it goes down. So the counties don't want any financial liability and the judges don't want any financial liability for what goes on in the facilities. They don't feel comfortable there. They feel much more comfortable over the management component of it than they do in the running of a correctional facility.
- ❖ The ethics person who speaks to us tomorrow will say and I tentatively am of the view that the judges have a responsibility to supervise these facilities, if something happens in the facilities, how can you say the courts are not liable. That is just my very tentative view. I think everybody is on the hook. Everybody is on the hook as long as there is this mutual model. This one case that we have been talking about in Lassen, it is the procedural posture of that case that shouldn't direct all of our discussions here. If any probation officer is terminated for any reason they are going to sue the courts and the county. Both better step up and put on a defense because both are liable. We will have a person tomorrow talking about the ethics of supervision and liability which I don't think should control the short term or long term recommendations we make. Let's get our direction so we can proceed in that direction. So what would you like to do:
- ❖ I was listening carefully to what June and Liz said because I don't have positional information on other individuals experience with the legislature in this room. I do know that they are intimately involved in legislation and how the process works and have lived through many of the initiatives that the Judicial Council has put forward in the courts. Having said that, I really agree with what Liz says whatever we put forward as our long term solution which I think we have done a lot of wonderful work on and have got the back up and justification for a recommendation is going to take years to implement based on my experience with trial court funding and unification. I was very interested in some of the conversation that was taking place this morning about the particular incidents that really created why we are here. I think that if we can come up with an interim solution like the one Mike was talking about, he had a reasonable person as a presiding judge, he had a problem, the presiding judge helped him deal with the problem, they resolved the problem. If it takes legislation for that to be a back up position, if what is in place isn't working, I think that is how we come to this interim solution. If people don't do it because it is the right thing to do, take care of the problems jointly because they are both responsible, then there is no alternative the back up position is that you are legislated to meet with the CAO or the board and work it out. I don't think there is a probation director in this room or anywhere else who is doing a good job and knows what they are doing who wouldn't agree that any good

- manager or director is expected to manage their budget, treat people fairly, hire and fire for the right reasons, not supposed to sexually harass people, I could go on and on for days here on what a good director should do so I don't see why we can't come up with an interim solution that talks about solving these issues.
- ❖ I think it would be best to try to work toward the development of an ultimate recommendation and suggested interim solution. If you don't, you risk the potential for your interim solution to be viewed as the answer to the problem. If we are able to time those together. I think it would be best. I disagree on how long it will take to move to a state model if that is ultimately what we thought should occur. The tracks that are laid for that as a fiscal issue as far as I can see.
 - ❖ Most of them do end up as fiscal issues, those of us who were involved in trial court funding know that it was piecemeal, the state promised a certain percentage, coming up they gauged the first year that percentage was going down so they reduced it.
 - ❖ That took 12 years because of fiscal concerns.
 - ❖ And this might too. I'm not saying that we don't continue finalizing our report, finding the best solution, and going forward with it. I hope I wasn't inferring that that we give up on where we are going. I'm just saying if these are the things that are really creating the stress, bad management and how that affects the pocketbook and especially during these terrible times, we owe it to work with people to resolve these issues. It's just fiscally irresponsible and in my opinion irresponsible as a leader to not address it and do as they did in Solano and work things through. If that has to be legislated to identify how you go about working those things through, so be it, but it is just the right thing to do.
 - ❖ I think as an interim solution, if you have an overlay in the counties where the judges appoint and legislation that requires that there be a screening committee or selection process that involved county representatives or the board of supervisors or their designated persons so they have got some influence on the hiring end. Provide for a joint evaluation process with the county opportunity to recommend personnel actions if there is a chief probation officer running amok with the checkbook. That could insulate the county from problems if the judge decided to not to take action and resulted in some liability situation. I would be comfortable with the presiding judge not being able to terminate or take a negative personnel action without approval of the county personnel director, chair of the board of supervisors, just so there is input at each stage.
 - ❖ We are talking about the same thing but we said it differently.
 - ❖ If we are trying to stay true to the overall feeling that we've tried to put out over the last 18 months which is the concept of collaboration in deciding many aspects of the responsibility of probation. Even if we go with the state

model, which I personally advocate because I think it is the right thing to do, but even going in that direction doesn't mean that we shut out the county. I agree more with Liz's comments than anyone although I think Bill's comment about ...his point being that I would like to see over the next couple of days, the general idea about where we are heading with all of this. If it is a state model, which everyone is hinting at, then so be it and I personally support that I think that is the way we should go. If it is a fiscal issue, then let it be a fiscal issue and we can move from there. The thing I am concerned about is that I don't believe that we need to have this interim model follow identical to the final model. I think it is okay to say we are trying to build collaboration and communication between all of the players. While we are struggling with the fiscal issue, if that is the only issue we are dealing with, we need to come up with an interim plan because what little I have been following in legislation it is quite clear to me there is going to be legislation and I think we are going to get undermined rather significantly by several counties that have made it quite clear what their move is going to be if we don't jump on something. So I agree with Liz and June quite strongly that some interim plan, no what that is we can discuss. I don't think we need to back track too much. I read these comments carefully. There are a lot of adjustments I think we can make. Don't forget that most of us were talking during the break that just because you have 15 that say this and 12 that say this, doesn't mean that most people don't agree with it. I know that Chief Price agrees with the plan but felt the CPOC position was fairly clear so he didn't feel the need to write another letter. So there are a lot of people that think this overall idea is not that bad, but they are not going to write a letter. It is like evaluations when I do workshops. I only get evaluations that say I was bad, and that may be for obvious reasons, but I only end up with 5 or so evaluations and there are 20 people in the room. I guess my point is that we shouldn't be too quick to dismiss this interim proposal because people are unhappy with it. I think we massage it. I think that is what most people are looking for us to do. The other part of this is I would like to see a general feel that we are heading in this direction and we need an interim plan because things are going to happen and we are going to be stuck out in the cold if we don't come up with a plan and can get some legislative input in.

- ❖ The suggestion is to come up with some interim legislation. Do we want to leave it to local control and give the default position? That was the suggestion in a lot of the comments that things were fine. Do we want to let them do it locally first and give them guidelines in terms of the expectations because the counties remain fiscally responsible for funding and budget and because probation serves generally as an arm of the court, it is recommended that pending long term recommendation many of the counties have expressed that they are doing well. They have a collaborative

- process in place. Do we encourage that each county develop such a process and in the absence of such a process set up a default.
- ❖ That to me seems like the norm. That is the way things should operate normally. I would assume that there are some counties that do not have working models now. What would that do to ensure that that wouldn't continue to be a problem that those counties would want to take legislative action against anyway.
 - ❖ I think we give them the default, if they don't like the default there is nothing to prevent any county or legislator from introducing legislation but if we have given them what they are asking for, which for the courts and the probation officers is that we like the way things are now, and they are mandated to develop a cooperative model, many of whom have a cooperative model in place now. Then if they don't develop that they have the default. One of our members is in Riverside where they have a lot going on. There is nothing to prevent legislative attempts but if they have a piece of legislation that says do it on your own if you can't do it on your own do this, I think it is going to be pretty hard to get support for additional legislation.
 - ❖ That is why Phil's comment is important. I'm assuming that the counties would prefer to divest themselves of fiscal responsibility or at least cap it through a maintenance of effort level and ship whatever is left to the state. I'm assuming that is true. If it is true, then I think we need to come out and define exactly where we are going in terms of a long range solution so that they can buy into the interim measures and preserve the option of saying we support that as a long range goal.
 - ❖ Liz, has this been discussed at CSAC and is that the consensus that the counties would like to give up probation all together?
 - ❖ If we can agree on what the final model is going to be then maybe we can work on. I think the counties are ready to say let's go to the state model, realizing that it is going to take a while. Now, what do we do between now and then. What do we present?
 - ❖ The reason that I'm less sure that you need to know what your long range plan is going to be is because the system that is in place right now is I think very apparently flawed and I think that flaw should be addressed. I think it is the right thing to do, the flaw being that counties have all of this responsibility and then are stymied in their efforts to control. I think that is a discreet flaw that exists today regardless of where the long-range plan would take the structure. I think the fix of that flaw would fit with any direction that this committee winds up going because until the transition kicks in, the flaw exists. I just think the flaw should be ...
 - ❖ You can't completely remove the flaw or else you have the answer.
 - ❖ Exactly. You can't remove it so you address it. It's not right to keep the board of supervisors out of the process when they are struggling to get

control of the accounting of a department. It is not right. So, we legislate that people come together and sit down.

- ❖ Agreed.
- ❖ As a practical matter, it seems to me that if people recognize that this is a problem, that they are going to come together and have a discussion which has happened as I understand it in a number of different counties and they are going to work it out. You have a piece of legislation that compels people to do that and they don't want to do it they are going to pay lip service to that piece of legislation or ignore it. They are going to have some meeting that really doesn't accomplish anything. I wonder, we can do this but I wonder from a practical matter if it will have any affect.
- ❖ June, from a practical point of view, lets assume for a moment that everybody is happy, and then a county comes in and says we aren't happy we are taking something to the legislature. Now we say here is something we have already done for you. Is that really what we are doing? Trying to see that we don't get these rogue legislators.
- ❖ I guess from my part I would like to think it would work, that there wouldn't be an impasse like that. That there are mature adults that recognize that there is a law that dictates that we do "x", "y" and "z" and we have reached an obstacle but we have to figure out ways around it.
- ❖ You do it exactly the way you do during binding arbitration. You can make your decision or you bring somebody else in to do it.
- ❖ I'll tell you what the similar model was, before we got to unification we went through lengthy processes where municipal and superior courts would have to create coordination plans and we would have to meet certain guidelines and standards and say that we were working together on this issue and that issue and we had a lot of variance in terms of how we would do that but we had to submit a plan to the state saying this is what we have done to coordinate our efforts at the local level. What you are talking about is something akin to that process where you set guidelines out and counties and local courts are free to develop cooperation plans within those guidelines for a structure for dealing with the chief probation officer issues and then if they don't by a certain date you have got a default.
- ❖ And then that did lead to unification. So it was an interim step and even though it was different than the one we ended up with in a lot of ways it ended getting the final work recognized.
- ❖ The reason the standards and guidelines are so important because if you have a court system where you have 50 judges in each region. If you say your municipal judges becoming superior court judges have to do felonies by "x" date, or they have to do this by "x" date. It is not going to work for 58 counties. That is why it went to the local courts to develop their coordination plans to meet the guidelines. This is a similar issue. Some counties are doing just fine. Others are not.

- ❖ That has been done, too, standards and guidelines, here is what you need to do by “x” date and if you don’t have it done, the hammer was funding, so I guess the hammer in this case would be the default.
- ❖ When the 25 of us got together at Pismo Beach we were trying to come up with a balance that recognized that you are going to have as a chief, conflicts with board members and judges. There are about 18 chiefs that have gone away in the last five years that had nothing to do with boards, and strictly to do with judges. Where a judge wanted a program that the chief couldn’t afford to fund or didn’t want to take dollars from the level 1 caseloads in adult and turn it back into juvenile caseloads to deal with truants because they felt that it was more important that sexual predators and people that assault, use drugs and sell drugs get the services rather than dealing with truants that you can do very little with. Truancy is more of a school problem. Those are some of the conflicts that existed with one chief that ended up going away. They got pushed and they jumped. What we did was we said, well then it is very clear that in Riverside or San Bernardino that the personality clash is with the board but now the board can’t take out the chief. But a judge can take out the chief. The charter counties that do the joint appointment, they would have to get together and collaborate before terminating. None of us could spot the mismanagement on the part of the 18 chiefs that went away. They just got into a contest and neither was going to give up but the other had all of the cards. How we came up with this, they felt that this was a balance. If the board wants to get rid of me, they are not going to screw with the budget and screw the department because you don’t like the person that is running the shop. It really wasn’t fair. Every chance that board member could do something to nick that chief, they did it through the budget process. They wouldn’t agree to settlements, binding arbitration, they just drug it out and let him hurt. Eventually, the department will get a no faith letter to the bench asking that they get rid of this person because I’m not getting paid what I should be getting paid, the budget is getting whacked because they don’t get along with this board member. That is how we came up with this and maybe this isn’t the interim solution because all of the chiefs do agree that we should go to a state model. What type of state model? They do like being under the AOC. They think that is the smartest. They work for the judges, the fact that we have the huge umbrella of the AOC makes more sense. The long term solution is a state model. Interim wise to get the board members who are pissed off at them to at least sit down and maybe come up with a solution and bring the chief in and say, we need to come up with a plan together. Maybe we take about half of your level 1 caseload and we give them the truancy programs they want.
- ❖ Should we look at their letter and consider that for our interim model?

- ❖ With all due respect, I think that is a huge bite to have these personnel actions done by a majority vote of the board of supervisors and the judges. In some counties you are talking about 270 judges.
- ❖ I have 150 judges, what they do is assign it to a committee.
- ❖ That is going to be viewed as an ultimate resolution. If the legislature gets that they will say it is over. I think we need to tweak the current system a little bit if we are going to preserve the long range goal.
- ❖ Is your suggestion first to leave it to local control and then to have the default?
- ❖ Yes.
- ❖ Do we have consensus on that? We haven't even concluded that we need the long term decision made before we do the short term but we will get to that next. Is there a consensus that any proposed legislation leave it to local control first.
- ❖ Before we vote can I ask the county folks something. Will that resolve the county's concerns? Because if it will, then that is not a problem but if that is not strong enough to resolve what we are going through.
- ❖ Each county and court develop a collaborative process for hiring, evaluation, and personnel actions determined locally.
- ❖ With an MOU.
- ❖ If they can agree to it, whatever it is, it is fine. If they can't agree for whatever reason, then you go back to this default.
- ❖ If it is left to local control then it would be something like an MOU that is renewed annually.
- ❖ With the default, we have 58 counties doing 58 different things. We discovered that at the very beginning. So you can legislate a default, but the county doesn't have to go to the default even if they don't like what they are doing to begin with.
- ❖ Why?
- ❖ If it is the law then why don't they have to do it?
- ❖ Because they don't do it now.
- ❖ But there isn't a law now.
- ❖ In some cases you can be fired by the presiding judge and in some cases the board appoints you sometimes they have collaboration sometimes they don't. I think we found many different practices out there that were not exactly the way the law suggested it be done. I would like to think that we are going someplace. The other thing that keeps coming back to my mind is probation is totally under funded. One of the things that we really need to look at is with this interim suggestion is how this gets to the other issue which is a big huge looming issue.
- ❖ We did say in our interim report, one of our recommendations is stable and adequate funding for probation.

- ❖ I'm probably the most uniquely hired probation officer in the state. I'm under contract with the board, and I'm appointed by the presiding judge. Which means, theoretically, that the board could cancel my contract and I could still be employed by the judge but I wouldn't get paid.
- ❖ Or the converse.
- ❖ I'm just saying that there may be something in there that is workable in terms of whether it is an MOU or contractual.
- ❖ How do they do that.
- ❖ They simply draw up a contract with the county counsel that outlines specifically what their expectation is of me. There are some collaborative clauses with the courts but I sign that and then I'm appointed by the presiding judge.
- ❖ I respectfully suggest that that may not be the model that we are looking for.
- ❖ I agree.
- ❖ You were asking what counties were under contracts. I asked a couple of chiefs if they had contracts. Here is the one from Mono County. Mr. Hager shall continue to be employed by Mono County as the chief probation officer serving at the will and pleasure of the county administrator in accordance with the terms and conditions of this agreement. Mr. Hager accepts such employment and the Mono county administrator shall be deemed as the "appointing authority" for all purposes with respect to Mr. Hager. This shows you exactly what Bill was saying. Law says that Mr. Hager should be appointed by the juvenile court judge upon a recommendation from the JJC and the delinquency prevention commission. Most counties don't even have delinquency prevention commissions anymore and a lot of counties don't have JJC's. So here is a contract that the CAO is the appointing authority when the law says otherwise.
- ❖ My assumption is that there had to be an understanding between the presiding judge of the court, and the board or the CAO for that to fly.
- ❖ You can basically do anything you want unless one party is unhappy.
- ❖ That comes at the time you try to fire the person. That person just gave up the peace officers bill of rights. I'm not sure how you can do that. You may but when it comes down to it, I'm going to come back to those rules.
- ❖ It's an illegal contract so no need to consider it.
- ❖ Everything we have just discussed basically goes to local control. It sounds like every county wants to have local control. As was just pointed out if people are working together and it is working out why change it?
- ❖ To protect the chief probation officer who is doing okay but for some reason.
- ❖ That is what we are developing that model for. If there is competing legislation, as long as there is legislation on the table that addresses that concern then there will be a response from CSAC and the Judicial Council

- ❖ It sounds like everyone is in agreement. Is there a consensus that it should be local establishment first with guidelines set forth as they did in the coordination, which would basically be the principles that we have discussed and established? Stable and adequate funding, collaboration, cooperation, those principles that pending a final recommendation by the task force that each county should develop a process by “x” date with a default. Is that what we are saying?
- ❖ Are we talking about a legislative proposal that would apply to all counties or just the non charter?
- ❖ Non charter.
- ❖ I know you are just giving examples but I don’t see CSAC buying in to anything that we started talking today on the interim process about local and stable funding. We already know that there is funding discrepancies across the state. Some probation departments are much better off than others. Its okay that that is our principle but I think that the counties are going to start getting it put to them that they are going to have to start coughing up more money, that we are saying that that is part of the deal, we are going to end up with a problem because to my knowledge most counties today are really in bad shape and next year is going to be worse. It’s not that it isn’t one of our overall principles but this will be DOA if we use that terminology.
- ❖ We can work on the terminology to get across the ideas that we want to share and then do a local model and with a default model for those counties that can’t communicate and collaborate. Is that what people would like to do?
- ❖ Are you saying develop a local model in lieu of status quo in the default model.
- ❖ Right. Let each county develop their own model. We are going to give them guidelines.
- ❖ If they get into a major problem, they have got this default model that they have to abide by.
- ❖ We have to tell them what triggers the default.
- ❖ If people are going to ignore the legislation, then that is giving them nothing but if there is some way to trigger the default and we lay it out I think that the side who is feeling the least satisfied in what is going on will make sure that trigger kicks in.
- ❖ How much time will they get?
- ❖ I think that you set up a reasonable amount of time with them to formalize the agreement in an MOU if they don’t reach it by “x” date then they are in default. I think you have to have a trigger for that to be reviewed annually. You have to address the circumstances when things go bad.
- ❖ With the coordination model, yearly we had to file a document that said that it was taking place. You had to sign saying this was happening.

- ❖ I have to say this. I would like to see us take a stronger stand and not go to a default model but I understand the reason for it. If in fact people are doing whatever they want anyway, then by using that default model you are giving them yet another opportunity to not follow whatever rules we might have. It just makes it a little longer before we try to tell them to do something. I would like to see a little stronger system, but if we are going to do this default model, which I'm feeling that most of you want to do, then in that model we should suggest at the beginning what we would like to see. What level of collaboration, involvement, etc.
- ❖ The reason for that is that most of our responses are saying leave us alone until you come up with a final recommendation but that doesn't resolve some of the issues we are here for.
- ❖ I think if we give them strong guidelines at the beginning of the legislation and leave it to local control, a lot of the counties are doing very well.
- ❖ A majority I think.
- ❖ The probation officers are basically saying that they have more stability with the courts than the board. To give them fair opportunity to be hired, evaluated and terminated, they would like to see a model that is basically not always changing. If the local counties have come up with a model that works for them, why not let them do it. For those counties where there are problems and we know that there are some, if they can't develop their own model that works then give a default model that is triggered by "x". For those that come up with their own model, then have the annual MOU signed. It may be that counties will change it from year to year, too. They may find that things work better a different way as time goes on. It will give them local autonomy.
- ❖ How do we know when it is working?
- ❖ I agree with everything you are saying in terms of a default model in that when I first got on this committee, we had a presiding judge that no one could speak to. Now we have a presiding judge who speaks to the board. I had a slight problem the other day and called the judge and within two minutes it was fixed. If you have a presiding judge and a board of supervisors that can work together, you are going to be able to control it locally with no problem and you will know if it is not working. Then the default will kick in.
- ❖ My question is if things are working well that is not an issue. But how do we know when things aren't working. Who triggers when things aren't working? The judge, the board, the probation officers.
- ❖ It could be any of the above. You have to define the trigger and how it is triggered.
- ❖ My point is that the board of supervisors and the presiding judge may think things are working great and the probation officer does not agree and any combination. Somehow we have to write in.

- ❖ I think it is either the court or the county that can trigger.
- ❖ Denny is talking about a different situation. The triggering that I am picturing is if there is a problem in reaching a resolution on what the MOU should be. Once the MOU is in place that process is how operational problems will be solved. Every year that MOU would be ratified. If you want to change it, then you start again. If you can't reach agreement then the default model kicks in to handle any operational problems.
- ❖ So as I understand it, we are suggesting that counties put a model on paper by a certain date. So what we are saying is that you have to have an MOU in place by "x" date and if you don't, you go to the default model.
- ❖ That makes perfect sense.
- ❖ We are not changing the statute that requires the judges to appoint in non charter counties. We are just doing an overlay that requires collaboration.
- ❖ He is saying if locally you don't want to collaborate, that is your local model.
- ❖ If you do the opposite, saying the court has no control, that is in violation of the statute and you can't do that.
- ❖ But there are counties that are doing that.
- ❖ Are there many counties that are doing that?
- ❖ It looks like Inyo and Mono.
- ❖ If they are outside the law...
- ❖ If they are doing okay, then we don't want to mess with them until the long term model is in place. Why make them change twice.
- ❖ To me it makes sense if we are supporting a long term resolution.
- ❖ Are you also talking about changing 270?
- ❖ Yes.
- ❖ No.
- ❖ Then you are doing nothing.
- ❖ You can require people to collaborate but one side has the authority?
- ❖ You can require that person to collaborate even though they have the ultimate authority.
- ❖ But that is a change to 270.
- ❖ I think we are talking about revising 270 to say that there be a collaborative appointment developed at the local level or this default. That would be the new language in 270.
- ❖ I envision that a lot of counties that think they have a situation that is working fine right now, when they put it on paper they will find out that they don't like it. You will get the attorneys from both sides trying to put that language down and you are going to find out that what you thought you were doing you both have different ideas about. You heard Judge Jahr and I talk about the process in Shasta county. It isn't a problem, yet if you read Judge Ruggiero's comment to us, it is alright if the counties want to play but bear in mind that we have the control. It was really clear that input is

- okay but we don't have to listen to them. When you try to put our model down on paper, what you think is working may not work.
- ❖ If you change the ultimate appointing authority you have reached an ultimate solution and the state model is off the table. I think you have an overlay requiring cooperation but leave the appointing authority as is.
 - ❖ Why would you say the state model is gone?
 - ❖ Because the model would be an ultimate solution. Local jurisdictions can do whatever they want or have this model.
 - ❖ But I would argue that it is not an ultimate solution. You have this adopted state model for courts, equal justice for all, urban rural suburban to the extent that probation is an arm of the court, why wouldn't you still have that same argument that on all of these statewide standards that we still wouldn't want to pursue a state model.
 - ❖ I do think our report is very clear on that. I think the governance piece is a huge part of it but we haven't talked this morning about the benefits of moving to a statewide model for improving probation overall and enhancing probation's ability to do the important job that they have. I don't think that is taken care of with a collaborative appointment model necessarily. With a statewide model you have all of the benefits of being able to advocate for a stable and adequate base funding which is all of the fundamental principles that are behind the trial court funding model. I think we can handle some of that potentially with the intent language in the bill, that the intent of this piece of legislation is an interim model and the final recommendations are forthcoming.
 - ❖ Is there a way to handle that legislation without amending existing statutes? Most counties don't follow 270 anyway.
 - ❖ I am not an attorney but I think it would be irresponsible to leave existing statute as is if we think that this would be the model that the counties should follow.
 - ❖ So we don't get bogged down on this issue, let's keep the issue of what statutes we need to amend or can we accomplish it without amendment on the table. Let's talk about the introductory language, the local development of the model, the MOU and the default. Then let's figure out if it can be done without amending other statutes or if it requires amendment. Understanding that this is an interim piece of legislation pending final recommendation and it seems as though probation and counties are in support of a state model. The court is in favor of a state model with the court assuming responsibility. Unless anyone has changed their position, that looks like the recommendation that we are going to make in our long term governance model. The big question that remains on the table is the facilities, which we hopefully will be able to address in our next meeting. Do we want to put that in this interim legislation?
 - ❖ Why not?

- ❖ If nothing else it will give Riverside and San Bernardino reasons to sit down together and talk instead of saying give me the authority and I'll take care of the problem right now. Neither one of those chiefs is mismanaging their departments.
- ❖ The only thought I have about having the intent language setting forth policy statement about long term goals is I can picture a legislator not being able to embrace that and saying that I'll do this part but not that.
- ❖ I think it should say that this is an interim solution to the governance piece however the task force is developing a California probation model and will release it's final recommendations.
- ❖ I hear what you are saying, they will look at this and see the big dollar ticket attached to the long term model.
- ❖ That and as a policy matter, is a legislator going to be prepared to say yes I think this is a good idea. They haven't given it any thought. We are going to need to do the ground work following this report to bring legislators to our position.
- ❖ We can certainly try and I can imagine the scenario where we could find a legislator to go with the interim model but is not prepared to be the spokesperson on a statewide model.
- ❖ The intent language can say something about the responsibility of the counties as it relates to budget and the responsibility of the courts as it relates to supervision of probation. Then go on to the legislation which says basically, develop the model at a local level with an MOU entered into annually. If you can't develop it at the local level, and we will lay out the principles that we expect, then here is the default model. We have to decide what triggers that default and we have to discuss if that will require change to existing statute.
- ❖ I think we can have a statutory framework that requires collaboration and to some extent may limit the authority of whatever judge in the existing statute has the appointment/termination authority without changing that existing authority. I've been assuming that is what we have been talking about here. Not changing the ultimate authority but developing a mechanism to require collaboration and to some extent limiting the authority of the judge.
- ❖ Is everyone on board with this so far understanding the position that Judge Ochoa has just stated?
- ❖ The first point of this program is that the locals develop whatever works locally and both parties sign an MOU. That doesn't change 270. The next plank is if both parties cannot come to an agreement, then they go to this default model that we have not yet defined. But this default model would I think then change the statute.
- ❖ It wouldn't change the ultimate authority but it could limit the exercise of that authority and could require that there be collaboration.

- ❖ If you can't do it according to 270 then this is how you do it.
- ❖ Yes, because if ultimately you do go to the state model 270 needs to remain in place anyway.
- ❖ The trigger I think is easy. If you don't have your MOU in place by "x" date then you go to the default model.
- ❖ Yes.
- ❖ The difference with coordination was that we had to send that to somebody. Who are the MOU's going to be sent to?
- ❖ The clerk to the board?
- ❖ I think you need to file it with somebody. You can't just let it go.
- ❖ Obviously there are counties that are not following the statute. If they want to do this outside the statutory framework that is fine but what I am talking about is not altering the ultimate authority but having a collaboration requirement, local plan with defaults that gives the county certain rights in terms of input into the hiring process, joint evaluation, ability to recommend personnel actions to whoever the judge is that has the authority, and I would even say on termination or negative personnel actions the county has to sign off.
- ❖ So now you are talking about the default model.
- ❖ Yes.
- ❖ Everyone I think agrees, local control, file your MOU by "x" date, file it with someone, we have to identify that person, if it is not filed, then the default is triggered. If you haven't filed it and you have a notice that the default will be triggered unless there is receipt of the MOU by 30 or 90 days or something. So you have a second change to get it together.
- ❖ So that someone has to be someone with authority.
- ❖ Once we have a probation services advisory committee and have some staffing for that, down the road. If the long term recommendations are going to take a while to become operational and funded, down the road it is going to be easy because you have the committee and you identify a person on the task force.
- ❖ One quick consideration, couldn't that model create a situation where one side intentionally doesn't cooperate because they like the default model.
- ❖ Yes. And that is why the default has to be the minimum that the county would expect under current circumstances.
- ❖ Our default model ought to be the one that we proposed because so many people hated it that would force them to collaborate.
- ❖ I don't agree with that I think we need to create a floor, not a mid level or ceiling.
- ❖ People need to understand that we are serious about collaboration.
- ❖ I think you are right. It has to be a model that both sides would not want and would rather find a way on their own.
- ❖ There were still 26 people who said they support this.

- ❖ There is nothing to prevent counties from adopting our default in their MOU.
- ❖ Except that the probation officers are saying that this doesn't sufficiently protect them.
- ❖ We don't feel that there is a real opportunity to give our side of the story. It is the board member going to the judge or vice versa.
- ❖ As a practical matter, you have to have cause to fire or there is going to be a lawsuit that costs both sides a lot of money.
- ❖ Let me give you an example. Somebody files a 131.7...
- ❖ A 131.7 says we can't meet our mandates because you are under funding us and we are making it public that you are not giving us enough money to do our job adequately and has serious political ramifications. That obviously upsets folks. A chief in his right mind wouldn't do it. But if he did, then you see that it evolves into a political reason to get rid of the guy as opposed to.
- ❖ Every chief which has filed a 131.7 is not around.
- ❖ No there is one left.
- ❖ Our system, being a charter county, we handle all departments heads that are hired, because they are all hired by the county with county counsel scrutinizing the contract, the person signing off on them, they are filed with the county clerk. Then that county clerk becomes responsible for notice to the board about when contracts are about to expire we can do the same with this MOU and I was thinking that should you go to the default, the AOC would be responsible because under 270 it says that the presiding judge should have appointed that person with the exception of charter counties, so the AOC would be the guardian of the default trigger.
- ❖ That could be through an advisory committee or whatever.
- ❖ So what does the default model look like?
- ❖ What I'm talking about is no change in ultimate authority for hiring, slight changes in evaluation and termination, but limitations and required collaboration by requiring that the judiciary include county representatives in whatever screening process they have for hiring, or in the hiring process. There was one letter that I keep recalling that said we had a screening process with members of the board and some judges and they interviewed all of the candidates they submitted three names to the presiding judge something like that. In evaluation, joint evaluation, the county could do an evaluation with the presiding judge with the opportunity for the county to recommend personnel actions to the presiding judge with the judge having the ultimate authority. The judge also would have to get sign off on any negative personnel action from the county so they are not faced with the rogue judge who says they want their buddy as chief probation officer and you are gone. To protect the chief probation officer from that.
- ❖ What about the personnel actions?

- ❖ The judge has to get sign off on any negative personnel actions. The judge still has the ultimate authority but really can't act without the county.
- ❖ So it is sort of a veto power.
- ❖ Yes.
- ❖ And then I think you said if the court takes an action that is contrary to the recommendation there is a subsequent event?
- ❖ If you have got a chief probation officer that is spinning way off his web, the county would have the opportunity to come to the presiding judge to say reign this in and take some action, it is the judge's responsibility to do that and if they don't, then I would say that you have got a pretty good cover. I think that if anyone suing the chief probation officer under the current system, the attorney would be committing malpractice if they didn't sue the county and the state in situations where the chief probation officer is under the authority of the court, you have got a cover. Your response is that we saw the issue and made a recommendation to the judge, they didn't take action. It insulates you from this type of liability.
- ❖ Basically your recommendation is no change in statutory authority, county involved in the screening process or selection, joint evaluation, any negative action on the part of the court requiring a sign off by the county, if the county refuses to sign off, that shifts liability to the court. Then the action is not taken. That really makes it a collaborative process. The judge has the ultimate authority but has to get the county approval.
- ❖ What if the county wants to fire and the courts refuse?
- ❖ The county can recommend that the court take a negative personnel action. If the courts refuse then it doesn't happen but I think the county is then insulated on the liability issues because they have recognized the problem. Within the authority that they have they have taken the proper steps, they have recommended that the court take action. The court refused.
- ❖ What about fiscal management?
- ❖ With fiscal management they are still stuck with the bill.
- ❖ What does insulated mean? That we are off the hook and the courts take full fiscal liability?
- ❖ It doesn't necessarily address the issue of budget mismanagement, but who knows maybe the county is then in a position to sue the court for not taking action.
- ❖ I agree that if we somehow change the appointment authority now, then why would legislators want to do it again?
- ❖ Well, because of the fundamental flaws. This is still just addressing the fatal flaw that June was talking about earlier.
- ❖ This is putting a bandage over the concerns that the county has about the current structure without changing the whole structure. Recognizing that there needs to be a much larger change.

- ❖ This is only one little piece of the whole thing that needs to happen with probation.
- ❖ So we go on 270. Then two would be the presiding judge shall collaborate and shall file an MOU with “x” by such and such a date.
- ❖ Shall collaborate on hiring, evaluation and negative personnel action any personnel action with the county. Develop a plan for that and submit a plan for that by such and such a date.
- ❖ It amends 270 but leaves the ultimate authority where it is pending long term recommendations.
- ❖ We need to have some language in there that gets to the ability of the counties facilities management people having input into the operation of those facilities. Specifically the juvenile detention and the camps.
- ❖ There are lots of fiscal issues that we know are out there. We are not going to be able to address all of them.
- ❖ Isn't that a part of the long term?
- ❖ Maybe so.
- ❖ Is this an acceptable default model?
- ❖ Before the group answers your question I have a personal question before that. Do the county people then see that this default model would be adequate to address the situation where problems sprout because of some difference of opinion about, like the Fairfield situation.
- ❖ In our case what the judge is proposing is essentially what we have. Because we do collaborate but the ultimate authority is still the presiding judge.
- ❖ But would you have done this had you been successful with the legislation as Helen Thompson did?
- ❖ The concern I have for the counties is that this only really works when the personalities make it work. If the presiding judge is required to collaborate and goes through all of this process. If the presiding judge wants to do what the presiding judge wants to do, all other things set aside there will still be this head butting and in that instance, the first time that happens the county will be in Sacramento showing why this didn't work.
- ❖ Well you have to have the repercussions built in too about what happens if you don't do it.
- ❖ If we are on the same plane on the long term goal, then the counties have to recognize that there are going to be some of these issues along the way and until we get the ultimate change in place to get you out from under probation and hopefully they can deal with it within this structure. It's not what we all want if we had a clean slate and were making our own picture of this.
- ❖ What happens in your scenario if the judge does not get the sign off from the county to terminate and just does it anyway?
- ❖ The county's liability is reduced.

- ❖ That has to be written in there.
- ❖ No. If the presiding judge wants to terminate the chief probation officer and the county says no and the presiding judge does it anyway, then the presiding judge has violated the statute. I don't think a presiding judge is going to do that.
- ❖ They are worried that they will.
- ❖ Then the presiding judge has really created a liability situation for the court.
- ❖ Not for the county.
- ❖ The county says we didn't authorize that because we know that that presiding judge had no cause to fire that person. We are off the hook.
- ❖ I like that I am just looking for additional comfort on the different scenario which is where the county wants to take the person out and they can't for the same reason that they can't today.
- ❖ What do the counties do then?
- ❖ Traditional recourse is to penalize the department but you don't want to do that as it hurts the employees and the people you are providing the service to in the process.
- ❖ If the chief probation officer is creating a liability situation such as allowing sexual harassment or bad personal practice to occur, I think the county recognizing that that situation exists, making a recommendation to the presiding judge, and the presiding judge ignores that, I think it has created insulation for the county. In the other instance where it is a check book issues, where they are not going to create lawsuit liability issues perhaps then some recourse to file a letter with the judicial council to suggest the presiding judge is not addressing the issue.
- ❖ How many times does that realistically happen if you have that much input with the judge?
- ❖ It is more personalities. That is part of the reason that the chiefs have been so adamant about staying with the judiciary as being their oversight and appointing persons. In reality, city, counties, states and federal governments are all run by temporary help. Now with term limits, it is even worse. When you go to Sacramento anymore and work legislation it is pitiful. There is no history. That is why chiefs want to stay under judges.
- ❖ That is what this suggestion would do. How are boards involved in the screening process?
- ❖ They would be part of the screening process and forward the candidates, any of whom they would be happy with. The counties wouldn't have a sign off on the appointment process but they would be sure of getting someone that they liked.
- ❖ That there is either budgetary, managerial or other problems that occur that aren't being addressed on the spot.
- ❖ You might just reach those kinds of issues where you are at odds with the presiding judge. This person may come in and say 131.7, the roof is falling

in in juvenile hall and we have to rebuild. You have to help me. You may say we can't do that. A judge may take the position that this is something that you need to make a priority to do. That kind of tension is going to continue to exist and gets to the root of the fiscal problem that exists in probation.

- ❖ I've never heard of 131.7. Is there the reciprocal of that where the chief probation officer is saying that they don't have funds to meet the mandates is that because that manager is spending money over here which may be nice things to do but are not necessarily mandated things to do. I've never dealt with one of these.
- ❖ By and large, when over a period of time the chief has gone in his budget hearing and said I need twenty staff, I've had "x" growth in pre-sentence reports, "x" growth in adult population, and "x" growth in juvenile. And to meet the workload needs of that I need twenty staff. The board says they don't have the funding to take care of those problems, we will have to defer until next year. Next year comes and goes, same problem only it is a little bit larger. So now it gets to the fifth year and the chief goes to 131.7. Now he makes everyone mad because this is a public document.
- ❖ What if this hypothetical department has got these problems because they are doing their reports the way they did in 1950, everything long hand, no technology, no automation, nothing else because the leadership in this department chose to manage this way.
- ❖ Usually what happens is that they have already eliminated everything that they possibly can if the chief has got any sense at all. In other words, there might not even be supervision services by that time. You may have eliminated all adult supervision services, which is a political issue as well. Now all of the probationers in the entire county are not being supervised because you don't have the budget to do that. You have informed your CAO of that and they don't have any money to help out so that continues until you get to a point where the mandated services under the code are not being met, then is when you would get to 131.7. At that point probation is pretty much decimated. It is bare bones.
- ❖ I recall about fifteen years ago, my chief probation officer came into my chambers and said I'm sorry but we are so under resourced that we are not going to be able to handle any pre-sentence reports or supervision on misdemeanants. I said, well wait a minute there is a statute that says if I think a misdemeanor case is serious enough for you to look at and give me a report, you have to do it. Sorry we don't have the funds. So they do it to us, too. And they can't file a 131.7 because we don't have any money. The tension goes both ways.
- ❖ So is that when you issue a contempt?
- ❖ In most cases, there aren't many counties that are doing misdemeanor reports anymore because of that.

- ❖ And, it is required by statute. But you know, there may be some issues that we can't address with in an interim proposal.
- ❖ I do want to just say this for the record, I know you are thinking interim but I have to imagine the worst-case scenario that interim staggers on for some years. So, I have to say again for the record, I spin out this worst case scenario in my mind where a situation not unlike what happened in Riverside recently or San Bernardino is a better example, where the board is insisting on taking out a chief probation officer, the courts say no, the court has the ultimate authority, they talked, they met, they had meetings, I know what happened in those meetings. The board said, ??? to you, and went to their old pal Brulte and got the legislation in. I don't see how this model prevents that scenario and that is why I am asking about that, the fiscal, the accountability scenario. Because that is the one that resonates really well in the legislature as I think it should, that they will go then and say to the legislature (they the board) can easily say and rightly say that we are responsible for this office running efficiently, we have not had the ability to control this person because current statute gives the judge the ultimate authority. We have talked to that judge and explained the situation and the judge won't go along, so we want to change the statute so we can have better accountability for the public monies that we are spending and we think it is only right since it is our general fund, that we the county should be able to control the situation.
- ❖ So you are worried about the one or two counties that do that.
- ❖ That can happen in any county.
- ❖ Yes, it can happen in any county, but basically, we have circulated this decision to the counties and we are basically saying that you have got to work together, you've got to talk together, you have got to develop a local model, you have got to write an MOU, or you go to this model. It is only after they are unable to develop a local model, they can't talk and develop a local model, then this kicks in. If this doesn't work then they are going to go out and author legislation. I would hope that there would be enough opposition to that from the council and from CSAC that we don't see a number of different counties coming up with their own pieces of legislation.
- ❖ But I think that is not that unlikely a scenario. Those are exactly the counties in which that is going to happen. That is how it will play out. The counties that aren't talking now and can't come to an agreement won't be able to come to an MOU so they will go to this default model and then the default model doesn't address the very circumstance that they are facing.
- ❖ The fundamental principle is that authority follows fiscal responsibility. Whatever the connection was, this default model ultimately does not address this. At least not cleanly.

- ❖ What it leaves that scenario to is a political issue in terms of whether the presiding judge is making a responsible decision by supporting the chief probation officer as opposed to taking the recommendation of the board. Either the judge can defend their position and say no I think the board is wrong because “x”, “y”, “z” and is required to do this by law and this was inadequate. Unless the presiding judge can do that, he is going to have an issue next election.
- ❖ Is it reasonable to think that we are going to be able to come up with some legislation that is going to resolve that problem?
- ❖ See, I actually was feeling fairly confident until I understood that you meant that this would not replace 270. If this replaced 270, what we have just discussed, then I saw that as yes, something that has a lot of opportunity for local molding and has a fall back position to address situations where communications break down and that fall back position is in fact a collaborative process because of the flaw that we talked about earlier, that counties are fiscally responsible but courts have obligations and probation to the courts as well. So you mandate that last resort backstop default model that that be collaborative. When I saw it in those terms without a step even further back where if that model broke down then the presiding judge is in control. I saw that as a solution.
- ❖ Judge Ochoa, if the default model did take that responsibility from the judge that would solve that problem and wouldn't the judge think three or four times before they gave up that?
- ❖ I think that this might have a chance to fly with all of those judges who wrote the letters saying the chief probation officer works for us, they provide services to us, they write our reports, see all of these statutory things they are to do, it is all court connected. This is enough of a gulp swallow that the presiding judges could take. I think to go further than that ..
- ❖ Would one step further be only if all of these other things that we have written into the system failed? We would get right down to the nitty gritty and there can't be a solution that those two, so it goes to some other group. I know when we have that kind of problem we do everything possible to solve the problem before it gets there.
- ❖ In terms of that issue, the opportunity for the county to recommend personnel actions to the presiding judge who has ultimate authority. Unless AOC or some state entity would take on the obligation of fielding any complaints.
- ❖ We have set this up with the court employees where we have appellate court justices that hear the complaints. You want to encourage resolution at the local level. You don't want to set it up so you can see the legislation to say if it doesn't work, then we go to this, if that doesn't work, then we go to arbitration and we call in the appellate justices who are going to tell us

whether or not we hire or fire our chief probation officer. You really don't want to do that. I think what you really want to do is get people to communicate on the local level and develop their model. And then, if that doesn't work set up a default that is undesirable to both the court and the county because if you take all of the power away from the court, the county is going to want that model and vice versa. Right now, we know that probation officers feel more secure with the courts having ultimate authority. I think your default has to be undesirable to both so that they are going to want to establish a local model that is acceptable to both of them. Then when you get to the default, you have to say what is undesirable to the model that Judge Ochoa has suggested. Well, the board will be involved in the screening process and probably that is going to be worded so that whoever is involved in the screening process, the judges and the board members it will only forward to the presiding judge candidates that are acceptable to the entire screening committee. So the board then has control over who is hired. If they say, no, they are not acceptable to the entire screening process, they are not going to go to the presiding judge. So the board is going to get one of their candidates, somebody that they screen that they want. The court is going to give up power there. Usually in counties where it is working, the board and the court are working together anyway and in some counties the board screens first and sends the candidates to the court. That is actually working in some counties now. The second step is now let's say you have to leave it that the chief probation officer is hired by the court where the board has not been involved in the screening process, then you get to the evaluation. You do a joint evaluation. The judge says they are doing great and the board says they are doing lousy.

- ❖ But that can happen even if you joined in together and hired them.
- ❖ Yes, that can happen in any circumstance.
- ❖ So there is a disagreement. What do you do? You put some language in the default that says you have got to work together to inform the chief probation officer of deficiencies and provide an opportunity to remedy. Then you continue to evaluate and you get to the point where there is going to be a termination decision. If the judge decides to terminate, the judge can't do that unless the board agrees. So judges have given up their power there. If the board decides that termination is in order and the judge doesn't do it, the board documents their reasons therefore and I don't think that you can legislate a shift in liability, because liability is liability, you can say it shifts one way or the other, but I think you can say recommends termination and stating the reasons therefore which would ultimately be considered, I don't think we want to say this, but in any litigation that the board has recommended termination and the court has not terminated, I think that would ultimately go to the bottom line. I think in this model, everyone has given up power.

- ❖ My question is do both Liz and June then, assuming we agree on this and it sounds like we have some consensus here, some county comes in to their favorite legislator and tries to get something passed, is this going to give us ammunition to say that we have already got something on board or as I said before can we solve that problem?
- ❖ To answer your question, I don't think it is. What is your take?
- ❖ Unless there was a clear position from CSAC that this is an interim measure what we really want is to get out from under this to the state trial court funding model, so live with it, work with it, so you don't divert us from that goal. If CSAC takes a strong position on that issue, I think that will be pretty powerful.
- ❖ I think we certainly would make that pitch behind the scenes but I can't commit that we would come out and oppose one of our counties on a bill that they are sponsoring. I don't know that we would but I couldn't commit to that here and now.
- ❖ That is not going to resolve your problem with the Riverside County. That seems to be a political issue that is going to have to get resolved outside this because the model that you have introduced seems to be a really good one but the problem you are faced with right now, especially if you introduce the grandfather clause is not going to resolve the immediacy that Riverside County is having, if they want to get rid of their chief.
- ❖ And that might just be a political issue.
- ❖ And if we are able to reach agreement on this which is really the existing system with checks and balances for the concerns that the counties have if anybody runs up legislation like that, the other counties will say to the legislators, no, don't do that, we are on a track on a course we have set a goal and let them work it out themselves. I don't think any of that legislation is going to fly if we can come to a consensus on this kind of issue.
- ❖ The question on Judge Ochoa's format here where a presiding judge wants to take some personal action for termination for whatever reason and the county said no is one side and the other side is where the county recommends action and the judge said no. Could not the legislation say in either of those cases that fiscal liability is the result of the underlying cause whatever it is would be born by the party that was vetoing it. For example if the judge wanted to take action and the county said no and something were to arise six months later because of what the judge wanted and the county was at fault. It's the county's liability. Could not that be done legislatively?
- ❖ It is hard to shift liability by statute because it would depend upon the underlying circumstances. If you are recommending termination because there has been employment discrimination issues and if there is no termination in that case, I think the argument could be made that if there is a termination there is going to be a lawsuit against both the court and the

county but the person who recommended the termination but wasn't implemented is certainly going to shift the liability to the courts. I think we have to do some further analysis. Normally, we can't shift liability like that because it is dependent upon the underlying issues.

- ❖ And who is going to hear that? A visiting judge?
- ❖ Then it goes to the court in your county first for litigation then it goes to the AOC.
- ❖ If it's a court employee. If it is a chief probation officer under existing law, if a chief probation officer brings a lawsuit now he or she brings it in the county where the action occurred.
- ❖ But you get an appointed judge from outside.
- ❖ My question was more let's say an employee who didn't get promoted or got fired or in some other way treated in their minds poorly sued the county, the chief probation officer and everybody else. What I was trying to get at was shifting the liability for that case either to the county or the court whichever was at fault.
- ❖ I think this is a good argument that might very well occur by virtue of the circumstances but I don't need to get it legislated in.
- ❖ There is a converse, too. If the judge recommends and can't get county approval then the judge might be insulated and the county on the hook if it really is an incidence of discrimination that the person has an actionable cause for.
- ❖ I think this is so close to being completely satisfactory but I have to pitch this last thing and if everyone agrees that this does it, I don't vote so that is fine. I just want to have this on the record so that it is something that you have considered. What about a model where everything you said but not only would the court have to seek approval from the board before terminating, the board would have to ... You have it so that the court cannot terminate unless the county says yes. Your default would include that maybe it is okay. So if the board wanted to terminate, it has to have the courts approval. So that is symmetrical. Okay.
- ❖ It puts the judge here and the board here then tied connected, without changing the ultimate authority.
- ❖ It also puts the probation officer in the middle ... I feel like a political football right now. I really do, I've been listening to this conversation for the past hour now and feel like I am getting knocked back and forth between the board and the judges. Somebody is recommending that I be hired, somebody is saying, no don't hire. And I'll do this for you if you do this for me. I just don't feel right about it.
- ❖ The judge still has the ultimate authority and responsibility it just ties in the county to evaluation, hiring.

- ❖ I can see a circumstance where the county says we'll do this for you but you need to get rid of that chief probation officer. And I could see a judge saying okay.
- ❖ What can the county do for the court now that we are under the state? What could they buy us off with?
- ❖ They'll paint your courthouse.
- ❖ Courthouses are going over to the state too.
- ❖ Okay.
- ❖ They are all going to the state but not at the same time. You may be in a county where this is feasible.
- ❖ But don't you have to have cause to let that chief probation officer go?
- ❖ In my mind, you do but it doesn't sound like you are sitting around talking that there is a whole bunch of cause.
- ❖ I think that is a given. You can't fire someone without cause and not get sued and lose.
- ❖ Let's look at how you are protected and not protected. Right now if the court and county agree, they file an MOU and it is status quo. If they can't agree, then you are already hired so you go into default and the screening doesn't apply and you go to the evaluation process, which most chiefs are going through anyway. It may not be formal but you have to be accountable to the board in terms of budgetary issues and the judges have to be happy with you. If the judges are not happy with you, that is not good, if you are not fiscally responsible, the board of supervisors are not happy with you. So you are sort of going through that right now. The default provides for a joint evaluation with notice and an opportunity to be heard and to address whatever deficiencies there are within "x" amount of time and that probably needs to be written in too. Then a further evaluation where the decision is made. If the court decides to retain you and you were hired by the court, you are retained even though the county disagrees. The only time you are going to be terminated is if the court is unhappy with you and the county is unhappy with you. In which case you both sign off. If the judges are happy and the board doesn't sign off, you stay. If the judges are unhappy and the county disagrees then you stay.
- ❖ Which is actually more insurance than you have now since it only takes the judges to be unhappy to terminate at this time.
- ❖ If we are keeping 270 it is for good cause shown.
- ❖ What aspect of the default are you feeling uncomfortable with? I am just trying to think about it from a probation officer's perspective
- ❖ I am not sure that I can articulate it clearly at this point, I guess I need to see it in writing to be able to think about it more clearly. During this whole conversation I felt like I was bouncing back and forth like a tennis ball between the two groups.

- ❖ I can give you an example of where it can occur and that may help. We do go over our budgets in a given year and we are not providing the service level that the court wants. They are both unhappy with us, it is not something that we have directly done. We didn't have the funding, we couldn't provide the service. If they are both unhappy with that idea we are gone.
- ❖ What is the cause?
- ❖ You are over your budget and are not providing the service level.
- ❖ Well, that is true but there is a problem.
- ❖ What I'm saying is that every probation department in the state of California cannot provide the service level that they are supposed to be providing anyway, so if you wanted to get rid of them, you can simply say that they are not providing it because we all know that they are not.
- ❖ I can tell you every planning director will say the same because they can't keep up with the code enforcements, every welfare director can say that, every department can say that. Times are tough and managers have got to manage.
- ❖ But are they mandated under a certain code section to do it?
- ❖ Absolutely, even a worse code section in terms of welfare and institutions code.
- ❖ That is the real world.
- ❖ I don't think this disadvantages chief probation officers. That would be a real concern. I think it insulates the chief probation officer.
- ❖ We are not going to jump to any resolution. We are going to have time to think about this.
- ❖ If someone could contact Supervisor Tavaglione, it would be very helpful to get feedback from Riverside County because it seems like a lot of the concerns we have focus on Riverside, San Bernardino, and are there others?
- ❖ Not this year.
- ❖ So, if we could do that overnight and tomorrow we can further discuss this and think about what concerns you might have on the behalf of probation.
- ❖ We have drafted some language for the default model. I was talking to Liz and June, I have a concern that this is such a drastic change from the model that was circulated that it would be nice if we had an opportunity to circulate this model and say we have considered all of your responses, here are the general themes of concerns that were raised by the probation officers, the county and the court. We have considered all of those and revised our recommendation and taking into account the fact that many of you told us that things were working great in your counties that you have a collaborative process so here is the revised recommendation. If we get that out quickly after tomorrow's meeting and give them a short turn around, I think Liz you told me that we could finalize it at our November meeting and that would still give you time to do what you need to do?

- ❖ Our board doesn't meet until November 19 or 20, so we wouldn't be able to give final sign off on the model. We could certainly look at the comments that we have received during the comment period but the CSAC formal position couldn't be taken until the meeting.
- ❖ If we gave you a final suggested model at the November meeting, that would give us time to send it out for comment, review the comments, work with it some more and at the November meeting say this is what we want to do. That would give you time to work with CSAC and give June time to work with the Council.
- ❖ That is actually perfect timing.
- ❖ Does everyone agree that we should send this model out for comment?
- ❖ Yes.
- ❖ We have been trying to put together some language with respect to the default and Audrey has been working with Judge Ochoa so basically, as I understand the legislation it would read with a lot of introductory language explaining the purpose. In counties where the judge or presiding judge or juvenile judge has authority to appoint, the court and county must meet to develop a plan of collaboration (MOU) for screening, hiring, evaluation and personnel actions for the chief probation officer. They should submit the MOU annually to the AOC by "x" date. If an MOU is not file with the AOC by "x" date, notification shall be made and the county will have 90 days to submit an MOU. If an MOU is not submitted within 90 days of notification, then the default model kicks in.
- ❖ Question on the first model. You submit this annually, does that mean that the way you hire, fire, evaluate can change on an annual basis. So from year to year things could change and I would be back and forth on what may or may not happen to me. Or does that stay consistent throughout. It gets very hard to know what we are doing if every year someone is coming up with a new evaluation process or a new method of disciplining. All I'm doing is playing a political game of watching my back end rather than doing my job if I am worried constantly that next year they will change the process.
- ❖ If it is working right, you are not going to change it. If it is not working right, then you have ninety days to decide how to do it.
- ❖ How do I know that?
- ❖ How about goals and objectives that have been established by the CAO in combination with the presiding judge? There has to be a measuring device in place.
- ❖ You can sign a contract that is going to bind to another board or another judge. It is always subject to change.
- ❖ I guess as a realistic matter in terms of the MOU my assumption is a county and a judicial bench arrive at this first MOU and they either file it with the AOC or however that works. With the AOC at least you can get a statewide collection of what these things look like. So you file it. A year rolls around,

it is probably just going to be ditto ditto ditto, you wouldn't need to change it unless there is something that came up in the process and you want to fine tune. Then you would fine tune it and sign a new document. Whether it is annually or you file an MOU that stays in effect until superceded by a new agreement.

- ❖ Can I ask how the chief's contracts are now?
- ❖ I have a three-year contract with an annual review with the CAO.
- ❖ There is no opportunity for them to modify the contract other than to just review it. In other words, the contract is three years in length.
- ❖ They could modify it if I agree to it.
- ❖ I would think typically they don't have contracts.
- ❖ I also need to say that if you are relying on the MOU about half of the courts and counties don't use MOU's for services now, not everyone will do it. Some will say just leave us alone we are going to work it out. We have MOU's all the time that either they can get arrived at, can't get arrived at.
- ❖ You can say that any MOU will remain in effect until superceded by a revised MOU.
- ❖ I guess the concern would be that there needs to be an MOU filed that remains in effect until superceded by a new MOU which would probably revise the process or the composition. What happens if one side or the other is not happy?
- ❖ An MOU can only be in effect as long as both sides are happy. It is a contract for a period of time and if at the end of that period of time one side is not happy, they would rescind it and you would then go back to the default until they could reach agreement on a new MOU.
- ❖ So, it remains in effect until superceded. So what if it is not superceded? Assuming all is going well, now we have a new MOU.
- ❖ You can just say that by new agreement or if one party rescinds.
- ❖ I think what you have said is at least under the court coordination model there was an annual process by which they had to submit a statement saying that we still agree.
- ❖ Both courts had to submit the coordination plan together.
- ❖ Do we want to do this every year?
- ❖ Do you remember that collaboration was an incremental process to get us to unification. They required us to do more and more cross work with the budget axe hanging over us. All we want here is collaboration maintaining an existing structure until we get to the new world, the state model.
- ❖ And you want a backup position if they don't collaborate.
- ❖ That is the default.
- ❖ Is it possible that if we had an MOU and everyone agreed to it, that just a letter every year saying we agree to it.
- ❖ That is an MOU and that is fine.

- ❖ I don't feel the need for multi year agreements. Just say annual until superceded.
- ❖ Yes.
- ❖ With the court security MOU's we had some counties that say, look we can do a three year MOU.
- ❖ And then you can say that if the MOU is rescinded without new agreement then the default applies.
- ❖ The other point I have is that didn't we in our introductory remarks say that we understand that most counties are working fine now and that everyone is happy. All we want them to do is put it in writing.
- ❖ That could be in preamble language.
- ❖ Okay. I just want to be sure.
- ❖ Many counties are collaborating and chief probation officers.
- ❖ All we're asking is that you put that down in black and white.
- ❖ Formalize what you are presently doing.
- ❖ The first lead in there says stuff about the presiding judge ...
- ❖ I don't think that will be a part of the legislation. It is just for us to know that this applies only to the general law counties. It is replacing or augmenting 270. It doesn't apply to charter counties.
- ❖ As long as it is in the preamble that we are not asking them to make a new agreement.
- ❖ All it says is that whatever you are doing now that you are happy with, put it down on paper.
- ❖ I think Mike has a good point. We won't get 58 MOU's.
- ❖ I don't mean to put too fine a point on it, but the purpose behind the annual acknowledgement that the MOU is still valid and everyone is happy, is to take care of the problem where relations are no longer happy and deteriorate.
- ❖ You always have the opportunity for a new agreement or a rescission by one party.
- ❖ All the county or the court has got to do is write a letter and say they no longer agree.
- ❖ Then you go to the default if you don't have a new agreement.
- ❖ I think that is all you do. The MOU is in effect until superceded by a new MOU and we have to discuss signed by who? Who's signature is on there. Probably the chair of the board and the presiding judge. Or rescinded by either party with the specific language either the presiding judge or the chair of the board of supervisors. So that would mandate a rescission in writing signed by that same person. And then, unless a new MOU is filed with the AOC by "x" days.
- ❖ Does it matter that those parties change?
- ❖ No.

- ❖ The signatures hold weight for longer than the time that person is in that position.
- ❖ Most counties, to the extent that there is institutional memory, have set processes for dealing with this kind of thing.
- ❖ So then if they don't enter into the MOU by a given date.
- ❖ Probably needs to be cleaned up a bit. The first date is you need an MOU and if you don't have it by "x" date you get another 90 days and then you are in default. The second step is when you have an MOU it remains in effect until superceded or rescinded by either side, then you have "x" days to enter into a new MOU and if you don't then the default kicks in.
- ❖ Why do we want the additional 90 days?
- ❖ Because it will force them to work together before they go into default. It's like if somebody doesn't file their appropriate paperwork and they are in default you usually give them a chance to get it together. Then they get it together.
- ❖ If there is a disciplinary action pending and you have two 90 periods, you are looking at 6 months.
- ❖ Maybe you just give them 30 days for both. I just think you need to give them time. What if you have a change in the board or a new presiding judge and they didn't get together on time. You need a little bit of time.
- ❖ Then they are in default until they get the MOU. If they have any personnel issues, they are in the default process.
- ❖ That is fair. Maybe we only need one date.
- ❖ Okay.
- ❖ Just a question, maybe a suggestion. Rather than being precise that it has to be signed by the presiding judge and the chair of the board, not because the chair of the board changes, but because the chair of the board really has no authority to sign anything unless the full board takes action. Doing this the first time is not a problem but two years later if you do have a personnel issue or some other issue that is a sticky point with the MOU, do you really want to put it on the agenda and have a full debate about it and have the chair authorized not to sign it. If you could simply say the MOU is signed by the county and the presiding judge if you want or the bench. I don't know.
- ❖ You would then go into closed session on a personnel issue to authorize the CAO to send the rescission letter or something like that without having to have a full discussion in the board room to get authorization for the chair to write the letter.
- ❖ The chair has no authority to sign a contract or any other MOU without the full board.
- ❖ So just say "county"

- ❖ Just say the “county” and the court or the presiding judge. I don’t want to get into the court side of it. Maybe if you just left the county a little more general the county could handle it however it was deemed appropriate.
- ❖ We are talking about a lot of detail which is going to take some time to work out and may ultimately prove that we need to make adjustments. A tactic we have used in other situations is to provide for some broader language in the statute but to vest management authority or maintenance authority over this whole MOU and all of this detail that we could sit here for a long time to work out and craft and we are all going to want to vest that with some group so that the statute isn’t down to the minute detail.
- ❖ So just say county and court in that case.
- ❖ There is a group and whether it is this task force or another group vested with the authority for coming up with the final detailed process. That way we are not trying to craft in the statute which makes it almost impossible to change, and difficult to change all this detail that we are talking about. If we can agree to the concept and some parameters for statute and vest the authority for all of the detail and final signatories and all of that with some group that we can jointly, I think that makes it an easier management model if there are problems once we get to the field test stage.
- ❖ We should move along. If you are unable to enter into the MOU by a certain date you are in default. Don’t give them any time to correct or get an agreement, they are in default until they get an agreement. Is that right?
- ❖ Yes.
- ❖ The person appointed has to be nominated and screened by a committee consisting of the JJC and the county and the court in equal numbers specifying members of the board of supervisors and superior court judges.
- ❖ The county and the court in equal numbers but not the juvenile justice commission.
- ❖ The juvenile justice commission, that is in the statute. Realistically a lot of counties don’t have juvenile justice commissions or they don’t involve them in this process but we can’t change that because the people where commissions are operating have some political power that could stop the legislation.
- ❖ Some counties do not have a juvenile justice commission and others have very active juvenile justice commissions that have indicated to me that if we took out their role they would oppose whatever we did.
- ❖ We do have a juvenile justice commission and prevention commission appointed by the judge so if you start adding up the numbers there, the courts have more votes. I don’t know if that is a big problem but it could be.
- ❖ But I thought they were only going to send candidates forward that they all agreed to.
- ❖ Yes.

- ❖ You are saying we should even it up.
- ❖ Denny is saying that the juvenile justice commission would give the courts a third vote.
- ❖ The understanding earlier was that no candidates would go forward that the county was not happy with so if there were three votes.
- ❖ If you say it has to be a unanimous decision before the candidate goes forward then you are covered.
- ❖ That was my understanding. That we wouldn't send candidates forward unless the decision was unanimous.
- ❖ The way they did it in Santa Barbara when I was there was that they referred all of the candidates to the juvenile justice commission and the juvenile justice commission reviewed the applications and ranked them by paper and forwarded them to the bench and then the bench took them down to the top 5.
- ❖ You could say that the nomination process will involve the juvenile justice commission, county and court. Ultimate candidates will be approved by equal numbers of the judges and members of the board of supervisors in the screening process. So JJC might do a prescreen and recommend 10 people to two judges and two members of the board of supervisors.
- ❖ That is how they do it in Tulare.
- ❖ You can have a couple of tiers of process. The JJC doesn't necessarily need to be in the single committee??
- ❖ As long as it is clear in our minds and the language that it takes both parties to agree to the numbers for the need to continue forward.
- ❖ You might want to make it the screening process shall include JJC.
- ❖ Yes.
- ❖ And candidates nominated shall be unanimously approved by the court and county.
- ❖ Candidates will be nominated by a process that involves the JJC and ultimate nominations shall be made by a committee consisting of equal number of judges and board of supervisors.
- ❖ So I think we have the concept. We can work on the wording later. Involve the JJC any candidates that go forward have to be unanimously approved by county and court.
- ❖ Appointment is to the presiding judge. The evaluation is joint and annual.
- ❖ That is a change.
- ❖ Right now the law says that the juvenile court presiding judge makes the appointment based on the nominations from the JJC. Very few counties do that.
- ❖ Normally it is the presiding judge that ultimately makes the decision. This is a change in language but I don't think it will be a change in procedure for most counties.
- ❖ That is the law that states that is how they are appointed?

- ❖ Yes.
- ❖ But that is not how everyone is doing it.
- ❖ Reasonably the court meets and by majority vote decides if they are going to approve the appointment of the chief probation officer. The official appointment may be signed by the juvenile presiding judge but that is just because they are required by 270 to do so, they haven't made the decision themselves.
- ❖ Are you suggesting by this that we are recommending changing it to trial court presiding judge?
- ❖ Yes.
- ❖ It would be appointed by trial court presiding judge or designee, in the event that they want to designate the juvenile court presiding judge, that is fine.
- ❖ Doesn't 270 already have a committee process and then a referral to the judge?
- ❖ That is the JJC.
- ❖ The JJC is that screen.
- ❖ Yes.
- ❖ Probation officers in any county shall be nominated by the JJC or the regional juvenile justice commission of such counties in such matters by such judge.
- ❖ For removal: probation officers may be at any time removed by the judge of the juvenile court for good cause shown and the judge of the juvenile court may in his discretion at any time remove such probation officer with a written approval of a majority of the members of the juvenile justice commission.
- ❖ You are taking that out and replacing it.
- ❖ That is not how the real world works.
- ❖ It might in some places, though.
- ❖ It does. There are some counties that follow that. When we surveyed there were some counties that indicated they followed 270.
- ❖ Should this collaborative model, the first one involve the JJC?
- ❖ You indicated that the JJC said if we were not going to continue to include them in the process, they would try block anything we do. You don't think they will try to block taking them out of the equation for appointment and removal?
- ❖ We are not removing them. We are leaving them in at the same level in the default, this is completely left to local discretion. Do we want to put in our local discretion portion that they include the JJC which seems to violate local discretion.
- ❖ But in the bottom you are putting the presiding judge in there instead of the juvenile justice commission.

- ❖ No. we are replacing the presiding judge with the juvenile court presiding judge.
- ❖ That was on removal.
- ❖ It seems that there should be some consistency between the evaluation and the removal process. Is it going to go by recommendation that it is going to go to the presiding judge or the juvenile presiding judge and then to the commission and then back to them? I think if they are going to do the termination, they should be a part of the evaluation process otherwise you are taking someone else's recommendation.
- ❖ I think what we are hoping to do is get the modifications in and get the collaboration in place without changing the existing structure too much and yet acknowledging that there are parts of the existing statutory structure that do not comport with reality and need some minor adjustments. Some counties don't even have JJC. Many counties that do, do not involve them in the chief probation officer appointment, etc. in accordance with the statutory provisions or if they do it is in a pro forma fashion.
- ❖ Did we ever get any comments from a JJC?
- ❖ No. but we have never targeted them either. There isn't a list of JJC's.
- ❖ Did I hear earlier that the juvenile court judge is appointed by the presiding judge in every county?
- ❖ Yes.
- ❖ I don't have a problem with the presiding judge doing it.
- ❖ That may be less of an issue than the juvenile justice commission's involvement as it exists in the statutes now and what happens when you shift from juvenile judge as appointing to the presiding judge, even though that is realistically how it happens anyway.
- ❖ They appoint them as well, do they not? The juvenile justice commission?
- ❖ Yes.
- ❖ Well this is going to go out for comment, too, and if anyone has a problem with it they will let us know.
- ❖ We should send it out in pretty much the language we anticipate the legislation to be. We should send it out as worded and how it is going to affect or not affect 270 so we can hear back from the juvenile court judges, the JJC, their role, are we going to amend 270 and if so, how are we going to amend it and that would give you time to work with Liz and June to figure out what we need to do in terms of consistent language. It is hard to leave the JJC in there recommending to the juvenile court judge and having termination powers and then sort of stick this in. it appears to me just initially as being a little inconsistent.
- ❖ You don't think they are inconsistent.
- ❖ No, I think we should eliminate the juvenile justice commission's involvement in termination. I don't know if they will care about that. I think they are more concerned with hiring, but we will find out.

- ❖ I would agree.
- ❖ Do you know of any chief that has been terminated with involvement from the juvenile justice commission?
- ❖ No.
- ❖ Only in Santa Barbara in 1976 when the chief had gone through three consecutive grand jury investigations, they went to the juvenile justice commission for input. But, they didn't have a vote. But in grand juries you don't have a vote anyway. But they did go for input and they were a very active JJC.
- ❖ It was used in our county, which is probably very rare, but our chief probation officer was a fifty-year employee and the judge thought it was easier to have the juvenile justice commission suggest that she leave rather than him.
- ❖ We are now on evaluation.
- ❖ We put judge and board of supervisors in parentheses. There were comments that the board of supervisors ...
- ❖ As a practical matter I would suggest keeping that as generic as possible because if you say county (board of supervisors) they may well and probably will delegate that to their CAO or however they do it because ...
- ❖ There was concern that at this level, when there is nomination by the presiding judge, it should be members of the board of supervisors and judges.
- ❖ They didn't want CAO or personnel department people.
- ❖ At this level, we want evaluation by judges and board of supervisors or their designees?
- ❖ In equal numbers?
- ❖ At this level of evaluation by court judges, board of supervisors or their designees?
- ❖ Probably for both because if the judges would like to sit or have their court executive officer do the evaluation.
- ❖ Is that an issue for the chiefs?
- ❖ There are some chiefs that don't like that at all. They want to deal with the judge that they report to and they want to deal with the board of supervisors.
- ❖ That is okay but it has to be equal across the board because judges see their CEO as equal to the county CAO. Judges want to deal with board members and they expect their CEO to deal with the CAO.
- ❖ You have two or three judges, they are going to work with their court executive anyway. They should be dialoging. Judges and county board of supervisors or designees? Normally it would be the CAO that would be the designee. Is that a concern?
- ❖ It has been. It was clear at our table.

- ❖ The board of supervisors is always going to bring in their CEO or CAO it just means when the ultimate vote comes down it will be two judges and two board members. You can consult with anyone you want.
- ❖ I think reality is that you want to.
- ❖ One would hope that you would so that you can be accountable to the people in your jurisdiction. And the courts would talk to their court executives, also.
- ❖ So no designees, there then.
- ❖ That is just a pragmatic problem. Boards of supervisors without exception will evaluate their county counsel and their chief executive period. I evaluate department heads with 500 million dollar budgets. In their single budget.
- ❖ I think it is how you are looking at the word evaluate. I think that the ultimate vote here is by the members of the board and the judges.
- ❖ There is not a vote on an evaluation.
- ❖ There are signatures.
- ❖ Do you do your board reports. Are they complete? What are your hiring practices? It is nitty gritty stuff.
- ❖ I think they say to the supervisors, supervisor Clarke, you need to evaluate the chief probation officer. Fine I'm going to have my CAO conduct the evaluation, etc. You are ultimately going to do the evaluation anyway and give the information to the board member and the board member is going to be responsible for signing the evaluation.
- ❖ You are saying that they don't sign.
- ❖ In a lot of counties it is tied into performance paid to chief probation officers, as well.
- ❖ In my county for example, the chief probation officer wants to get on 15% performance pay I'm going to do the evaluation. If anyone else does it she is eligible for 0. So I think she will want me involved.
- ❖ What are the chief probation officers' positions on that?
- ❖ On conducting the evaluation?
- ❖ They preferred to be evaluated by the judge and the actual board members. If the CAO wants to sit in, that is great. So many counties have gone to business plans. I am evaluated by my operational incentive plans. It is a 67 page document that tells what every single services are going to be accomplished what goals are going to be accomplished, what budget goals and program goals are going to be accomplished and then they evaluate me at the end of the year. If we meet all of the quantitative and qualitative goals for a six pay period period, everyone in the department gets a 4% for those six pay periods. Needless to say, staff rely on me to get my side of the job done and staff rely on me to get my side of the job done and the CAO sits back and watches. And then if you do well, you get a quality first bonus for six..

- ❖ Isn't it the CAO that evaluates whether you meet those goals and then passes it on to the supervisors?
- ❖ The supervisors then approve you getting the raise.
- ❖ That is exactly what we are talking about because you have five supervisors in a county and you are going to pull two of them to do an evaluation on a guy they might not even run into on the street once during the year. The only time they are going to see him is when he is before the board with an action item. The CAO is the one working with his budget and seeing if he is meeting that criteria and so they are going to make that recommendation to the two board members who ultimately may sign off on that evaluation. But I don't think you want the supervisors to do that unless they happen to be the liaison to your department and actually know what you are doing.
- ❖ But you are asking what the chiefs want.
- ❖ Yeah.
- ❖ They make decisions on your budget and you work for the judges.
- ❖ But that is done at the recommendation of the CAO, too.
- ❖ That is why I said if the CAO is there, that is great.
- ❖ So that we don't get stuck on this issue, why don't we leave it for now as court and county, the judges and the members of the boards of supervisors. Send it out for comment, think about it further. I think that everyone agrees that CAO's and CEO's can sit in on the evaluations. They are going to perform the evaluations. The chiefs preferences are to have the board and the judges and then they will have an opportunity to get comment back on this and adjust it if we need to in November. In terms of any personnel action, the trial court presiding judge responsible for personnel actions, the county may recommend personnel actions, the presiding judge may not take negative personnel action without county approval. Now does that include any negative personnel action including termination and anything less than termination? Any discipline?
- ❖ No discipline, no negative personnel action can be taken by the presiding judge unless the county approves. Everything up to and including termination. If the county recommends negative personnel action the presiding judge can agree and effectuate that action, in which case you both agree. If the trial court presiding judge disagrees, that action will not be taken and then what will happen.
- ❖ It is a political issue. Who is right the board or the judge?
- ❖ What do we mean by negative personnel action? That is really broad. Does that mean I can't have the probation officers on an OSC for a late report?
- ❖ No. Their employment status only. Termination, demotion, lower pay.
- ❖ Something that affects their contract then.
- ❖ Right.
- ❖ Any further discussion on this model today? We can pick it up again tomorrow morning once we have had time to think about it a little more.

Basically where we are now is this is going to be the suggested interim legislation pending the final recommendation report that we will send out for comment in about three weeks and hopefully we will work it into language that would be appropriate, decide or determine whether 270 needs to be amended, send that out by email to everyone for review and comment, then send it out for comment back before our November meeting. Does that sound reasonable? Anything else on this issue?

Education Working Group Report: Hon. Irma Brown

- ❖ The education committee working group has not met since our last meeting. At the last meeting we submitted some amended language that I think you will find under recommendation 12. We left it at the last meeting and invited additional comments. We did not hear anything back so we are going to move in that direction. I think what we have here now is some new rules and forms.
- ❖ The first two sets were effective July 1 of this year, the CYA commitment form is on the Judicial Council's agenda for the middle of October meeting and would be effective January 1. All of these deal with educational rights and are very much in keeping with our recommendations as to probation taking a role with education and trying to make sure that kids educational rights are ensured.
- ❖ Where I was starting is that those that were not at the last meeting, one of the concerns was that there were several recommendations that dealt with juvenile issues and probation so what we did was consolidate them into two recommendations to be consistent with what was in the report in other areas. They are recommendations 12 and 16 under tab 2 on pages 9 and 10.
- ❖ Just so I understand, 12, 13, 14, and 15 are now one recommendation.
- ❖ Yes.
- ❖ So the front page gives you the recommendation and the bullet points under that that we came up with.
- ❖ We are on schedule according to Audrey and my calculations.
- ❖ I wanted to provide you with copies of our new rules and forms so you can see the new rules that have been drafted dealing with education.
- ❖ These are all drafts at this point.
- ❖ No. The truancy and surrogate parent have been adopted effective July 1. The CYA commitment form went out for comment. It was drafted in conjunction with CYA. They asked us to come up with a statewide commitment form because it actually came out of a death in one of their facilities. Psychotropic med records were not submitted and there were a number of problems with medical records and it was originally created to deal with that but then also includes many other issues. That one was considered by the RUPRO today and I'm not sure if any changes were made and then it is on the October agenda for approval.

- ❖ That is going to change again, right.
- ❖ Yes.
- ❖ I want to make sure that I understand. So the recommendation we have in tab 2, recommendation 12 is what we are recommending not the bullets on this page.
- ❖ No. what we are recommending is the top recommendation here. It is a new recommendation that is a combination of 12, 13, 14, and 15. What is on page 9 is the same.
- ❖ So these are our complete recommendations to go into our final report with respect to education.
- ❖ Yes.
- ❖ Very good. Thank you very much everyone who worked on these.
- ❖ Then in our final report, do we suggest how to implement this or do we leave this up to the probation services advisory committee in our report?
- ❖ I think we leave it up to the rules and standards committee to further develop what we are talking about with Bill later today or tomorrow and then ??
- ❖ So these are our complete education recommendations for the final report?
- ❖ Yes.
- ❖ Any further discussion?
- ❖ Technology, that section is probably as complete as that is going to be. We will further discuss that at our next meeting.

Review of Laws and Mandates

- ❖ That would be tab 3
- ❖ Neither of them are here but I have to extend great thanks to LaRon Doty and Alla Vorobets. Between the two of them, they went through all of the statutes that they could find relating to probation as well as case law searches. They put in all of the keyword searches they could find as well as jeopardizing each of these and most of the case law they found was mostly clarifying statute and didn't create new law. This is a draft and there are a couple of things that are missing, if you notice anything missing, please let me know. The idea behind this was to have a brief description knowing that it is not as comprehensive as the full statute but as it stands it is 34 pages of 6 point font. We summarized as best we could to try to make it fit on one page. We have a column for the subject area and we tried to follow as much as possible the subject areas we had for the outreach we did during the first phase as well as the comments on the report. We list whether or not the statute regulation or rule. That is the one area where we may need more areas. We didn't have time and they weren't actually aware of any other areas where there are regulations. They checked with the board of corrections but couldn't really connect with anyone who could provide them with information so I look to all of you to provide me with anything

- else that should be included in this chart. Next looking at whether or not the mandate or discretionary items. They also ended up finding some things that are kind of other describing the work of probation. The next column involves funding. Currently there is nothing written in that section. We talked about whether or not we should discuss whether or not it provides funding to probation departments or requires some money in some way, categorizing that. We couldn't quite find the best way to do that. It's empty now and we need to fill that in so we can do sorts by funding. Description, collaborations talks about when probation needs to collaborate with other entities and then finally reference if it cross references in other code.
- ❖ Has anyone had a chance to read through this? Is this what we were expecting in terms of a review of laws and mandates? Are there major chunks that are missing? We talked about 131.7 this morning and it is not on there. We will add that in. there are a couple of others that I am aware of as well.
 - ❖ What is reference?
 - ❖ Reference is cross reference. For example, if you look on page 1 the second item down civil code 1279.5 cross references 1276.
 - ❖ I think our hope here was to go through and put together probably the first time ever compilation of statutes rules codes that apply to probation. I further hope, we will send this out for comment and ask people to comment as to whether we have missed anything that applies to probation. Ultimately, there will be the creation of the probation services advisory committee. One of their goals will be to look at all of this legislation to determine whether they are in conflict with each other or inconsistent. There are a lot of these in conflict. There are many mandates that require services that are unfunded or under funded. A lot of this legislation has been very piecemeal. Somebody decides they want to carry a bill here and mandates that probation officers do a report and then in another section I was reading mandates probation officers to provide training in certain areas. There is never any money provided. Some of these are based on grants and then you have a statute. It would be nice if somebody on the probation services advisory committee looked at all of the statutes, harmonized them and made recommendations to the legislature. What they did with the family code some years back was bring together all of the various statutes and mandates into one place. Not to suggest that we want to do that, but as you can see when you review this, this was a monumental piece of work and thanks very much to Audrey and everyone who worked on this. It's unbelievable, you have civil code sections, education code sections, government code sections, you have penal code sections, welfare and institutions code. And they are all mandating probation. Of course, the chief probation officers are all very familiar with these statutes and understand their various mandates but it is kind of amazing how these are spread out in

the code. Hopefully we will look at these to get feedback on whether we missed anything and then we will look at these and try to suggest legislation to harmonize these or repeal those that are in conflict with other statutes. At that point, there can be a decision made as to whether or not there needs to be further harmonization by way of pulling these things together in a specific code or leaving them where they are. Or at least cross referencing because there are so many pieces.

- ❖ Any further discussion?
- ❖ This will be helpful, too in moving towards a statewide model of defining what are probation services and what are the core services that this task force wants to acknowledge as being part of that.
- ❖ Some counties compiled lists. We got feedback from Alan in San Diego and Bill in Merced, and that was about it. I talked to a number of other counties as well.
- ❖ LaRon Doty who worked on this was a former probation officer in Santa Clara county and she felt that the way we had categorized services in the past really falls into two sets, process which is the work of probation and versus case work the actual job that a probation officer needs to do. That is why there is a colon process or casework. I welcome feedback especially from the probation officers on this committee as to how we can categorize.
- ❖ Would it be helpful to have them listed by mandate? Realizing that this would be difficult. Would that show anything in particular?
- ❖ We can sort it any way. This is just a start.
- ❖ It looks like they sorted them as mandate, discretionary and other by code.
- ❖ We can sort so that all of the mandates are there. We can also number them for example, there were 71 comments there are numbers along the side. We can have a list of how many statutes pertain to probation.
- ❖ It is always helpful to list them by code, too, so as you did the civil procedure, W&I, education. And in a separate list, if you want to put all of the mandates together, that would be helpful.
- ❖ So, this section is just about done.
- ❖ It is probably 90% done. It needs some basic editing, some filling in the funding columns and categorization. Did we miss any major areas of mandates for probation?
- ❖ I'm only on page 29 and only have a couple pages left to go and I haven't spotted anything on confidentiality of records.
- ❖ It's in there.
- ❖ So maybe this will give us time to review the mandates. If the chief probation officers want to review these. If you want to send it to other chief probation officers, other departments that have compilations of mandates and want to review this that would be very helpful.
- ❖ Norma might be very helpful on that.
- ❖ We can do that. We will get in contact with Norma, see if she can help.

- ❖ What we can do is clean them up here first and then send them to Norma, send them out and include in the report when it goes out for comment.
- ❖ Do we want to go back over any of the comments or issues that were raised in response to our first model that we sent out that Audrey listed for us this morning or do you want to wait to see this by email to address any further issues.
- ❖ I think it would be unnecessary to go over those since we have altered it so dramatically.

Model for Appointment, Evaluation, Discipline and Termination of Chief Probation Officer

- ❖ The one I think we should go over is grandfathering. Do we want to grandfather in appointment, removal or both.
- ❖ The chiefs were adamant about that.
- ❖ How could you not?
- ❖ There wasn't a person in the 25 person group that didn't feel that should be the case. That was how they were selected, they have gone through that process, it's worked.
- ❖ Now, their selection would be grandfathered in?
- ❖ The current selection process, the new chiefs come on board with the new model.
- ❖ How about the evaluations?
- ❖ They don't have a problem in fact they specifically put in there and that is why when the Justice asked me about who do they want on those panels, they were very clear that they want board of supervisors and judges.
- ❖ Just for the appointment issue.
- ❖ No for everything.
- ❖ No but the grandfathering for appointment.
- ❖ But you asked the question what about evaluation.
- ❖ They don't get grandfathered.
- ❖ What is there to grandfather. They are already appointed. They don't get reappointed.
- ❖ What they are saying is that they are pleased with the current appointment process, if you want to add evaluation that is great, they will follow that rule, termination rules?
- ❖ I move that we grandfather them in as to the selection process.
- ❖ Or you could just say for hirings after the date of the legislation.
- ❖ Lets work that in to be clear that those who are already selected are not going to go through another selection process.
- ❖ I understand that the chiefs wanted to be grandfathered in on everything including any evaluation process or hiring and firing that took place as a result of that.
- ❖ You can change an evaluation process any time you want.

- ❖ I understand but they specifically stated that they wanted to be grandfathered as I recall on everything period.
- ❖ This will give them an opportunity to comment. With the revision in the language it grandfathers everybody in on the selection process and then with respect to evaluation and termination it will give them an opportunity to comment because if the MOU in their county is as it exists now, they are going to be in whatever system they are in now and were hired under. And the default probably in most counties the default would provide more protection to the chief probation officer than the existing method. So I think when we revise this we will give them an opportunity to comment.
- ❖ We just need to make sure we explain that.
- ❖ If you grandfather all of them in, it doesn't solve anything that any of the counties have with existing problems. Because you have 58 people that you can't deal with until they are gone.
- ❖ I think if you asterisk the selection and state that all persons under the previous selection process will be grandfathered in however the rest of the language will go into effect as is. Then you will get your comments.
- ❖ That will give us some time to get comments.
- ❖ Are there any other issues?
- ❖ The qualifications of the chief probation officer raised both by CPOC and the line officers that there needed to be MQ's included in our legislation.
- ❖ In the interim legislation? I absolutely think in our long term but in this interim solution is that something that has to be addressed?
- ❖ Do you have an opinion on that Liz?
- ❖ In my own personal opinion, I don't think it is appropriate to include it now. I think it is the long term piece.
- ❖ At the meeting prior to the June meeting, this task force asked us to come back with a mission statement, qualifications and what our feeling was and that is what we did.
- ❖ For the interim or the long term.
- ❖ For the task force report.
- ❖ That is great. That is where it belongs is in the task force report but not in the interim legislation.
- ❖ So that is why they put these all together and because there are no real qualifications at this point unless you take a Stanislaus that just sent out their chief's flyer and goes through and talks about the position, typical tasks, responsibility, ability and knowledge, etc.
- ❖ I think we have consensus as a group about the minimum qualification issue.
- ❖ On an interim basis you are going to have unanimity from the county and the courts for the candidates going forward and I would hope that we are all looking at why these folks are qualified to go forward, and if they have no

- managerial experience or no probation experience, or whatever, they are not going to go forward.
- ❖ Obviously one of the concerns that I know probation staff have is people getting hired as chief probation officer that were police chiefs or who never worked in probation before.
 - ❖ District attorneys, undersheriffs
 - ❖ And that is not uncommon and it is a great concern for line staff and certainly as a middle manager it is a big issue for me.
 - ❖ Undersheriff in Tulare, District Attorney in Butte, there was a sheriff in Marin, the sheriff in San Francisco is an attorney with no law enforcement.
 - ❖ I know it is easy to say, line staff and middle managers and also all of the chiefs that I have talked to felt that this was really important.
 - ❖ You mean you want someone who has worked in probation?
 - ❖ Yes.
 - ❖ It's a novel idea.
 - ❖ It may sound peculiar but there are some counties that don't do that.
 - ❖ The other thing is you have about 31 counties that are basically considered rural and if you put in that they have to have management/administration background it really wipes out a lot of people at the local level because they never reach those levels. They don't exist. They don't exist in their organizational scheme. Some of the best get up to supervisor but never really have management/administrative oversight of budgets and other things of that sort. You eliminate an in-house person that may have all of the skills but all of a sudden doesn't meet the qualifications and has to be excluded.
 - ❖ Okay, so we have completed all issues for the moment that deal with the interim legislation and we will put on our agenda in November, qualifications, minimum qualifications for the chief probation officer.

Standards and Guidelines Working Group Report: Mr. Bill Davidson

- ❖ The standards and guidelines that have been developed since our last meeting and were sent out to the members of the committee, which included Mike Roddy, Ralph Miller and Paul Nicolosi. Also some others, Liz, Audrey, Justice Manoukian for comment and Norma. I got comments back that they were perfect and didn't believe it so I sent them out again. I did get comment back and Mike has made a comment, not specifically on the actual recommendations per se and so did Audrey and they can share their ideas with you this afternoon. These basically are ten of the recommendations actually, one of them is collapsed, I think it is 12, 13, and 14, into recommendation 12. What we did was try to develop them in such a fashion that they responded to the recommendation giving a standard to meet in terms of each probation department. It was a little bit difficult to do it in the sense that I don't know who the authority is on these. You can go

to the law in some senses but none of these really provided an area to go to the law to except for maybe recommendation 12 which I haven't fully developed. So I just used Judicial Council or probation committee because we talked about a probation services advisory committee and that kind of thing. We tried to put in a purpose and definitions if needed, and what the directive would be which is really the meat of the issue and that says this is what you will do as a probation department or a chief probation officer. Then there was a commentary as to why you would do that. What would be the purpose of pursuing this particular goal? What good will come from it? So that is that. I don't have any more to offer other than to offer them up and let you all make comments on them and suggest how they could be changed to be better. Mike and Audrey, you both have a comment that you made to me, if you want to offer that now.

- ❖ Sure. As one who is going through the state funding process, my comment to Bill was that these were fine in and of themselves but what I didn't see here was anything beyond in many cases, each chief probation officer ought to do "x", "y" and "z" and I didn't see much in the way in terms of moving beyond a county by county approach. I know in our situation, we are trying to talk about how we can do regional issues or get counties to start working together because we are having an incredibly difficult time trying to articulate to the state a 58 county model. They can't understand why we are not trying to take advantage of greater consistency, leverage resources, have better uniformity, some of those issues, and so if you are heading in that direction, trying to articulate it as 58 ways of doing business is nigh on impossible. My suggestion was that there ought to be some language in there about trying to come up with something beyond just a county by county approach. Because that will perpetuate in some of these cases where we talked about ...I mean on the one hand we talked about statewide standards for the qualifications for the chief probation officer but then we want to continue perpetuating a 58 county model. If you are going to move into a state funded direction, there are some real conflicts. I also don't advocate the one-size fits all approach, but there has got to be something in between that we start talking about.
- ❖ I think my comments go along with that a little bit. I was suggesting that we might want to draft some model standards that local jurisdictions can adopt with the hope that there would be some more statewide consistency because hopefully many jurisdictions would adopt our model as their local standard. I know that Bill is in a difficult position in that we don't have any rule making authority. We passed out earlier the education rules that the Judicial Council can promulgate to the court. I actually had a conversation with the staff to the rules and projects committee about do we have any authority over probation and the Judicial Council does not have that authority. There isn't a statewide entity with that authority, which is one of the reasons for

- this group. But at least we can draft model standards that we can provide to local departments. The second area was with the terms and definitions, that is the one area where I think in our report we may be able to draft definitions for some of the more common terms where there is ambiguity across the state. That way there is not common definitions within one county but at least some statewide consistency.
- ❖ My thought was in reading this, thank you for all of the work that went into this. I know that it was an incredible amount of work and that it was really directed at what the task force had recommended. I did talk to Audrey a little bit about the drafting of model standards that would apply and could apply statewide and would be drawn from the work that you have done here. The terms and definitions would be another step statewide to develop a common statewide language to facilitate communication delivery of services. I think all of that would broaden this from a county by county. It is suggested that on a county by county an annual mission statement be developed but I think we can promulgate model standards and not at this point but I think the advisory committee would be charged with the responsibility of helping counties to develop this mission statement and provide samples. Helping counties incorporate measurable outcomes and developing goals and objectives by providing them with guideline standards or suggested methods so that the information that is being used so well in some counties can be shared statewide. So I think those are the kinds of modifications we have talked about.
 - ❖ Any other thoughts or comments?
 - ❖ I think from here then what we will probably do with these is to give them to our writing group, Liz and Audrey to develop the model standards?
 - ❖ I think we will need assistance from probation.
 - ❖ I don't think that I am at all qualified to do that. I frankly think one other option might be to give this to probation services advisory committee. I don't know that I ever thought it was a bad idea, I just never anticipated that we would do that as a body in our report. But, I can't write model standards. I have no expertise in that area. We would have to rely on a subject matter expert.
 - ❖ Audrey, what was your thought?
 - ❖ I think we could draft some model standards and I thought that part of our charge was to draft some standards for the final report. It may not be in all of the areas where we need standards, but I think to give some guidance to local jurisdictions to have some models. I don't know that I have expertise, either, but working with Bill, I'm sure that your department will have some standards that we can use in conjunction with this as a model for
 - ❖ We should get a hold of that national organization and see if they have model standards. They have working groups on this and that and they may have some model standards.

- ❖ They do actually, but I'm not sure that is something that we would want to buy into. I don't want to suggest that Bill do anything more than he has already done but I would think that the leap from what you have done to model standards would not be horribly significant. I would be happy to help but I'm not sure that I would be of much value even. I'm involved with probation most of the time.
- ❖ You are representing probation.
- ❖ Why don't we have Audrey work with Bill and Phil and develop from this, maybe I am not seeing the picture correctly but I thought that this is the basis for the standards. The work is done. You've done basically the work, it is just developing standards based on this.
- ❖ Right.
- ❖ Why don't we try to do that?
- ❖ Suggested models for statewide standards.
- ❖ Is that something that your group would want to take on Alan?
- ❖ Setting up the standards? Absolutely. We would have to take it back to the leadership and look at who we would want to give that assignment to.
- ❖ What triggered was the fact that you got 25 folks together for half a day and you did what you did on the standards that you have already developed and that is a group of folks that are doing the job, not that Bill isn't but Bill is only one, and that it might get a cross section. I'm a little concerned about getting one size fits all and I'm thinking about Los Angeles County as opposed to Alpine County. There are obviously different issues there. I'm not suggesting that Bill should not do this, what I'm trying to do is get you some help.
- ❖ Interestingly, our current president, Larry Price, he was staff to the original standards that were developed back in 1978 and Bill has a copy of the 1980 version of probation standards. I have pulled out standards for the performance of probation duties and it starts off with the administration, the board general policies of the probation department should be formulated by the probation officer in consultation with judges and the board of supervisors, with the advice of the probation committee, November 1954.
- ❖ Just change the date on that one.
- ❖ It works. All the things we have talked about today, they were saying it was important back in 1954.
- ❖ How much further does it have to go Bill?
- ❖ I don't know because as I wrote these, basically what you have here is a standard, it is under the directive and it is based on what the recommendation is. So this is what our recommendation was, here is the standard based on that recommendation. I don't know how much further you would want to develop that. I don't know that you can because in my frame of reference you don't yet have the final model. Once you know what you are going to look like, you can say how mandatory these become.

- Because if it is a county by county basis, this is really going to be incumbent upon the chief probation officers to make sure that they go. If it is not, if it comes out of the AOC and we are all hired by the AOC or some other organization, that organization is going to promulgate these standards and they are going to tell us how to use them.
- ❖ Presumably, they are going to be very close to what you have got. They couldn't be radically different.
 - ❖ I don't know.
 - ❖ You could put more teeth to them and you would have more authority to impose certain things if you came from a central type of directive or under a central organization or agency. This way you still have got to leave latitude for a local discretionary adoption.
 - ❖ So let's wait until November, look at our long term governance model and then get back to this. Your point is very well taken, we need to see what our long term model is going to be and then we can go back to these. These standards are done, it is just a question of how do they fit in with the long term governance. Because where you have written probation committee judicial council, that is essentially the probation services advisory committee that is going to come into existence so what would their role be in relationship to the standards. So, let's wait until November.
 - ❖ In the meantime, you can talk to Norma and work together but until we have the long term governance model, we can't really complete this.
 - ❖ Why don't Bill and John and I, sit down and brainstorm where we think it needs to go and take it to our leadership.
 - ❖ We will put it back on the November agenda
 - ❖ Tomorrow morning, we are going to hear about ethical implications so I'd like to turn to long term governance model. We can discuss that a little bit tonight. Everything we do from here on out clearly depends on our long term governance model. How we draft the standards, how we set up the advisory committee, all of those issues depend to a large extent on the long term governance model.

Long Term Governance Model

- ❖ Suggestions in the first report, the feedback that we got strongly suggests that there is a lot of support for moving probation to the state. State funded but employees of the court.
- ❖ Same model as trial court employees. Discussion on that? We discussed this for a whole year in our first round.
- ❖ Would we be under the umbrella of the AOC?
- ❖ Sort of the same model, not talking about facilities, court employees the probation officers in the court and the field. We are not going to talk about facilities for the moment. I think that we have some consensus that they would be court employees, paid by the state.

- ❖ Hired by the local court. It's a local court employee not an AOC employee.
- ❖ But essentially the employment process would remain unchanged. The chief probation officer would have all of the authority that he or she has now it is just that instead of that employee being employed by the county, they are employed by the court. Their salary would be paid by the state. Funding would come from the state to the courts, and the courts would pay those employees. Obviously, as to that group of employees providing court functions and out in the field, any liability for those employees would be the court's responsibility.
- ❖ The counties are happy with that?
- ❖ Yes.
- ❖ So, that was what we talked about in phase I and that is what a lot of the comments brought to our attention. I think initially a lot of the courts said, we can't take over probation, it's too much, now as time has gone on, we have a lot of people suggesting to us that the courts would like to take over probation as to those officers in the courts and in the field, other than those who work in the facilities. Discussion of that issue in terms of the long range model?
- ❖ Is that a consensus? Have we reached a consensus?
- ❖ So far.
- ❖ And then the bargaining, in terms of their benefits, how do we do the court employees?
- ❖ It is all done locally.
- ❖ The court negotiates.
- ❖ And that would be the same with probation officers.
- ❖ So the salaries that existing staff have with the court are just switched over. They keep their salary benefits packages?
- ❖ Well no.
- ❖ Their retirement benefits still stayed tied to the counties.
- ❖ Yes.
- ❖ No. The question was did they transfer over, and the answer is yes. What the court has done since then is all over the board.
- ❖ The court could have frozen the salaries because they had inadequate funding, they could have given 20% raises because they felt they were under funded and had the resources. That was a court decision.
- ❖ They just couldn't decrease them.
- ❖ Once they entered and each local court got to make that decision.
- ❖ What about new hires?
- ❖ New hires are hired at whatever the going rate is.
- ❖ So, could a new person be under a different pay schedule than a grandfathered person is?

- ❖ The court realistically took the county's salary resolution of positions A to Z, and rolled them over and that was as of that day the court's salary resolution.
- ❖ The court had the ability to increase salaries but at their own discretion.
- ❖ We at the statewide level are working on a compensation plan.
- ❖ Whatever the court established for a position, it really doesn't matter if it is a new hire or an old hire unless they are paying longevity pay.
- ❖ You go into the same classification and you are paid according to what is appropriate for that classification.
- ❖ So, some counties have safety retirement, others don't. They would all have safety retirement under the courts?
- ❖ You would have to deal with statute because we have no safety retirement employees. But see, that is what SB 2140 when it transitioned the court workers to court employment status, was the transfer of existing employees and existing benefits, salary programs, establishing meet and confer provisions, dealing with not only current member benefits but also retired member benefits.
- ❖ So they wouldn't lose any of their present benefits.
- ❖ So it certainly wouldn't be statewide, it would still be up to the locality. So Fresno doesn't have safety retirement, San Diego does, San Diego keeps safety retirement, Fresno does not necessarily get safety retirement.
- ❖ That is how the court employees came over. Los Angeles court employees have different benefits programs than Shasta court employees. In other words, it is essentially, and in many instances the courts have tried to maintain local parity on that at least the benefits side, but it came over kind of in place as is with whatever was available.
- ❖ From a county perspective, too, that we don't go statewide so that in our little county someone that starts work of course, gets paid \$10 more than someone who does the same work next door at the county.
- ❖ There was also in the trial court budget commission, an effort to bring people up to a same standard that was recognized as being adequate and reasonable. If that is an issue, whether people have safety retirement and all probation officers are for it, I think there will be some measure to try to standardize that.
- ❖ I get the message that if this went through it wouldn't be done the same way that trial court funding was done and there would then be a special task force to deal with employee issues because the unions are not just going to buy into whatever we put down here. There was a very difficult process with representation by all groups for two years and there was a lot of compromise but the bottom line was something that everyone could live with. I just can't believe, if we have the model in place and it says that we will do it exactly like this, that is fine but I doubt that that would fly. They would have to have discussions with the unions, etc.

- ❖ I just want to make sure, what prompts me to ask, and some of the folks here may know how negotiations go, when I was involved with union activities, we would negotiate away certain things that new staff was not going to get that old staff had. A quick example, in Fresno county new hires when they leave the department can't cash out more than 400 hours of annual leave, while employees before that could cash out 1100 hours. New employees got less benefit.
- ❖ And that could happen.
- ❖ What I'm asking is, what you have seen so far in your transition is, that has happened, or hasn't happened?
- ❖ What has happened is that people become court employees with their existing benefits, then they have the individual negotiations that are pretty consistent with what in most situations, is going on at the local level with the counties. That is what we are seeing now. But with the budget constraints being what they are, the negotiations are going to get tighter and people are probably going wait a little longer for..
- ❖ I was just wondering if there was a blanket sort of response once new hires came on.
- ❖ Everybody came over as is, in fact, there were many MOU's in place and they continue on without any interruption and once that MOU expires, instead of negotiating with the county they negotiate with the court.
- ❖ How many counties have had a class of comp study since trial court funding went into place?
- ❖ I suspect that some counties have done their own class of comp studies from a court perspective. We have done a statewide one that we have put out there but I don't know yet how that is going to take effect or if it is going to take effect because the money behind it isn't there.
- ❖ That is what I was getting at. The disparity of parity between counties, even if they are next door to each other.
- ❖ The problem is when you try to do a statewide, you have it with federal employees because if you are a federal employee and you live in Los Angeles County and you are a GS 14 you make "x" number of dollars and you make that same number when you move to Shasta county. Obviously that money goes a lot further in Shasta County than in Los Angeles. You start doing that with your courts, and you have a statewide for your probation departments, that puts those people so far above the people that they are working with in a lot of counties that you have a lot of problems.
- ❖ That is the way it is now with Parole. Parole officers make considerably more than probation.
- ❖ The people in Los Angeles need more than the people in Shasta. Now you are trying to say they will make the same.
- ❖ No we are not.

- ❖ With the courts, everyone came in as they were. It was recognized that there were people at different levels and an effort was made to try to get people to similar ranges. What happened was a budgetary process where they identified under funded counties and courts where the positions were lower than what would be normally expected. Those were the courts that got the initial augmentation in the budget through the state process.
- ❖ We are a couple iterations beyond that. What we found in state funding is because of the disparity, because there was no willingness to go to a single statewide standard, we looked at class and comp, and are trying to get to a process but again, unless there is some money behind it, it is not going to go anywhere. We have created a four region with ranges based on an 18 month study that we did with cost of labor and local costs trying to come up with comparability because what the courts have told us is that they are eating themselves in the process. This county goes up 3% the one next to it goes up 3.5%, so they are more attractive, so the one below them goes up 5%. We are trying to come up with a way to provide some rationality because the state can't understand why we are paying court clerks in county A \$20/hour and in an adjoining county B they are making \$18.50/hour. A court clerk is a court clerk. We are even ourselves trying to come to grips with some rational process that we can articulate to Sacramento so that we can get courts funded at a reasonable level. Right now they are all over the board.
- ❖ There are those that can't afford some of these very large increases that have been taking place, then they come to the Judicial Council, AOC and the legislature for funding and the department of finance wants to know who is running the shop here.
- ❖ Even where the court matches a county raise of 10%, we can't convince the state that they should authorize the funding for the court because they weren't sitting at the table and they only gave state workers 2.5%. So even when you do the responsible thing there are courts that are getting caught in the cross fire at that point because the state says we are not a party in the negotiation and that was a local decision.
- ❖ You get 2.5 and you eat the rest of it out of your own budget.
- ❖ The problem is that we are in this transition from a county based system to a state system.
- ❖ Some counties have done is we have this retirement situation where people are leaving the court system.
- ❖ We are having problems getting the state to fund those past costs like a pass through if you will and so that is why when we start talking about class and comp stuff all I can say is that it is incredibly complex and we are still going through some major pain.
- ❖ That is why this task force is never going to get there from here, you know what I mean.

- ❖ I appreciate this discussion.
- ❖ The one exception to the issue about court by court, county by county ability to set salaries, which is the way it is, is that all of the CALPERS counties. My understanding is that all of the court employees are still riding the skirt tails of counties contract of CALPERS. Of course, the employees want it but there is a cost associated with it and our courts have no ability to say they don't want it because they are on our account.
- ❖ In PES you have to treat everyone the same.
- ❖ I think you are hearing that the long term governance model is the one with the state model.
- ❖ Recognizing that it is long term.
- ❖ I think the answer to your question was if probation officers transition to court employment they keep all of their existing benefits, they lose nothing, but once they are with the court, then their negotiations are with the court. New employees may or not have what transitional employees have, but that is with any employment situation.
- ❖ And we also retain seniority in terms of layoffs.
- ❖ I would think so.
- ❖ Within your locality, yes.
- ❖ Probably, yes but the other answer to your question is that those are all of the details that had to get worked out by these task forces in terms of honoring existing agreements, so for the sake of argument, you can say that existing local agreements continue until modified.
- ❖ Unless all probation officers are using the same union statewide, and I can't imagine that that is the case.
- ❖ One of the main arguments for amending this model and what are the problems with this model and why is it that this is being proposed.
- ❖ The first answer is that a strong recommendation in our first report is stable and adequate funding for probation and the best way that the task force envisioned getting stable and adequate funding is through a stable funding source. The entity with the most availability for funding and the most ability to offer probation officers is the state.
- ❖ And also an ability to spread it statewide rather than if one county is wealthier than another, they can provide better probation services.
- ❖ My concern is that the state could have a bad budgetary year for a few years in a row, so when the state has a bad year, every one suffers as opposed to a few counties here and there that have bad years.
- ❖ If you go to a statewide model, the state pays the bill.
- ❖ What about bad years?
- ❖ Right now the court in Los Angeles is laying off 350 people, that is how they are addressing their budget shortfall. There are other courts that are going through leaves and furloughs, just like you did in the counties, you have to deal with what is.

- ❖ I am just more confident in my county than in the state.
- ❖ There are a whole lot of courts who felt that same way and a whole lot of court employees felt that same way, and if you go to the state model it doesn't really matter how you feel about it, that is the way it is. That is the bottom line. There is a whole bunch of us who would much rather have stayed county employees.
- ❖ Sheila and I came from two of those counties. State funding was not a win for us.
- ❖ We did not want to be court employees or state employees. Guess what, you go to a state model and the only concession we made was that we would rather be court employees than state employees. That is a whole new animal.
- ❖ It gives the judiciary more control over the employees than the state personnel board.
- ❖ We developed four basic fundamental principles that says authority and responsibility must be connected. That was the basic principle that we worked with. If our model that we agreed to was a county model, then the employees would be county employees. Based on what Justice Manoukian indicated, with stable funding I think has a better chance I agree the state is not doing well now, but it has a better chance for the state model to provide adequate and stable funding.
- ❖ I think it goes back to the first meeting where I said that probation is the abandoned stepchild of county government. Nobody takes responsibility for it. The judges don't take responsibility, even though they have the hiring authority. The county doesn't make it a priority because it has all kinds of other things to deal with. Probation has had to fight, I mean, we did an initial study and in looking at probation departments around the state, there is a gap in experience levels because for 15 years probation departments were not hiring. They are either very experienced people who are close to on the way out or very new people and that is because of the way probation has been funded through the years. Although they are county funded in terms of the base structure, the counties we looked at originally had 35-50 % of their funding coming from the counties. The rest was from state and federal grants. You have probation departments always out looking for funding. You have professional grant writers on staff because that is half of your budget. That is untenable. That is not how probation services should be looked at. The thought was to move to a state model recognizing that community corrections provided by probation and rehabilitation services have real genuine value and should be looked at on a parity level with corrections and other aspects of the justice system. So that is what the goal is, to elevate the whole system.
- ❖ You don't think we will be treated like the step child of the state.

- ❖ I don't think so. All those kinds of concerns existed for the judges when we went to a state model. I think it hasn't turned out that way.
- ❖ Actually, it may give us some legitimacy because right now we have no one that represents us at the state level.
- ❖ We don't have anyone who will walk into the walls of the state government and say I need money for this. If you are under the judicial branch you will have the chief justice or some statewide administrator who has ties in Sacramento and you will have the judiciary behind you.
- ❖ It would still be the chief's call as to whether the deputies would be armed or not. Or would that now be under the judicial.
- ❖ Absolutely.
- ❖ That would still be the chief's call.
- ❖ Yes.
- ❖ How do you guys handle laterals?
- ❖ We don't. Every county has its own system. We have a group that is looking at this. There are those that would like to improve that.
- ❖ One of the other four principles is that probation services should be administered primarily at the local level.
- ❖ It's basically adequate funding, handled at the local level, responsibility for probation together with funding for probation. What is best for probation? How can probation make the best money possible to fund their services and to be recognized throughout the system and have some advocacy? Perhaps the best way to do that is the development of an advisory committee to make recommendations to the Judicial Council and or CSAC or however it is structured to bring harmony to the many statutes and rules that are in conflict with each other requiring mandates for which there is no funding. I think is probably going to be a great boost to probation.
- ❖ We hope so or we have wasted a lot of time.
- ❖ It's been time very well spent.
- ❖ I think the interim report had a lot to do with the shift in the perspective of the judiciary to consider a state model for probation services. I have had a lot of positive feedback since the report came out.
- ❖ There has been a lot of dialogue. The Presiding Judge committees, court executives committee, they have taken this information back to their court. Audrey has spoken. We have all gone to various groups. I've spoken to a number of groups about the work of the task force and they know that their concerns have been heard, and I think the interim report really informed them to a greater extent about the problems with the system. So what is the best recommendation for the system of probation, for the victims, for the probationers? What is the most efficient, effective way to achieve justice in the state, I think once they have read the interim report a lot of them have been persuaded that this really makes sense. Maybe it isn't the ideal

situation but it is the most reasonable and makes the most sense and will generate the most money for probation.

- ❖ I think part of the shift, too, was all of this outreach. The outreach has just been phenomenal. All of the organizations, all of the people that many of us have talked to but certainly Audrey has talked to. Folks there have just been remarkable, and I think that has helped tremendously.
- ❖ In terms of the structural change, probation chiefs having two masters one with the purse strings and one with the hiring and organizational service control. It's untenable. It has got to be collapsed somewhere and is it under the judicial branch at the state, which is where we are or is it under the county, locally, disconnected from the courts. That court connection is really being focused on through this whole process and the importance of the interrelationship and the necessary working relationships that exist between the courts and probation is receiving a lot of focus and attention.
- ❖ Is there any further discussion on that point. I think we have reached consensus on the recommendation long term that probation officers transition to court employment. Those who work in the courts and deliver probation services, the ones who work in the facilities and that for all of the reasons that Denny has articulated in line with our principles and that the details of the transition is something that would be assigned to the probation officers court employee task force.
- ❖ It probably will be a task force along with the advisory committee. I don't see that the advisory committee can take on all of these employee issues.
- ❖ Justice Ardaiz would be a good chair. He has the court reporter task force right now since he did such a good job with the employee task force.
- ❖ So we need to keep that in mind in terms of the long range recommendations for the governance model, the creation of a probation services advisory committee and then a chunk of that would be to work on and make recommendations on all of these employee issues, which is quite huge. That is why it does make sense to have this interim piece of legislation to assist counties during the ongoing process. I think the court employees act provides for resolution of disputes between court employees and the courts by bringing in an appellate court justice. I think there is a way to address and resolve those issues even if you have probation officers as court employees.
- ❖ In terms of the facilities, is there any other piece that we need to talk about long term governance besides the facilities?
- ❖ The probation officers have made it very clear to this committee that they feel it is essential that the chief probation officer maintain authority over those employees who work in the courts and provide services and those who work in the facilities. Is that a correct statement?
- ❖ Yes.

- ❖ Now, when you are saying facilities, do you mean juvenile hall and the ranch.
- ❖ Defining those it would be juvenile halls, ranches, camps, anything else?
- ❖ No, that is it.
- ❖ Electronic monitoring?
- ❖ Yes. The whole gamut.
- ❖ I think it has been made very clear to this task force that they feel it is essential. We had a lot of discussion about two models, one being where the chief probation officer is in charge of the employees in the court and out in the field, and then we have another model where we have another director of corrections basically and then structuring that. I think what the chief probation officers have informed us is that the delivery of services is on a continuum and it exists in the juvenile halls, ranches, camps, through electronic monitoring, into the courts, out into the community. To sever responsibility for that would be inappropriate. The judges have made it very clear and the AOC director, that they courts do not want to assume responsibility for the juvenile halls, ranches and camps. This is presenting a dilemma.
- ❖ It's a big killer.
- ❖ Here are a lot of the judges concerns. Maybe other judges can help me. Initially they had a concern, maybe some of them still do, that it would be difficult in the court setting to employ the probation officer and then when the probation officer is called to testify, assess the credibility of the probation officer in the courtroom setting. That is one ethical concern that I don't think is a big concern anymore.
- ❖ They said, how can we employ the probation officer and then the probation officer is called as a witness in a probation violation and they say, I supervise John S. and John S. didn't report and didn't complete his drug testing and so you the judge are called upon to assess the credibility of your employee and make that determination. I haven't been hearing that as much lately because judges are called upon to do that all of the time. So that is one.
- ❖ Judges are called upon to hear appeals in their colleague's case next door. Under unification we have appellate departments for misdemeanors in superior courts. So I have the judge down the hall hearing appeals from my courtroom.
- ❖ I think that is a lesser concern. I guess the hypothetical would be that the probation officer is now an employee of the court so the probation officer would want to testify what the judge would want to hear because the judge is the employer and I don't think that this is much of a concern. That was one ethical concern, but I don't think that is the big one.
- ❖ With respect to the facilities, the juvenile court judges, if I understand the law correctly are mandated to inspect the facilities and camps. If conditions

are not acceptable, the juvenile court judge makes orders to remedy the conditions. There is already that responsibility which is placed on the juvenile court judge. The judges felt that it would be too much to take on responsibility for the facilities. They felt that they do not have the resources to do that.

- ❖ They do not have the interest to do that. They don't want anything to do with being jailers or correctional officers.
- ❖ They don't want anything to do with corrections. Don't juvenile court judges have to inspect the ranches?
- ❖ Yes, anyplace with juveniles.
- ❖ There is already a responsibility on the court to do that and arguably there is a liability issue attached to that if conditions are substandard. The judges feel very strongly that they do not want to take over the facilities at all.
- ❖ The bottom line is that we are just going through this facilities issue with the court facilities and there is no way the state is going to take over additional facilities until 30 years out. In other words, this court facility issue is going to be major and is going to take years and years to get over the financial hump, that's part of it, and then he feels very strongly that it doesn't belong with the court, he is a person that comes from corrections and who has a lot of background in this area, so I would have to let him repeat it since it has been so long since I last heard it.
- ❖ If he wants the authority he has to take the responsibility otherwise they all go to the county.
- ❖ You know what, if that is the way it comes out if it all goes to the county, so be it with him.
- ❖ They do it in Arizona. The judiciary has control over juvenile facilities.
- ❖ There are a lot of places they don't.
- ❖ Most places they do.
- ❖ Anyway he has to repeat it himself. Audrey you were personally called in to be told why he doesn't want it.
- ❖ There are separation of powers issues about whether or not it is appropriate for the judiciary for lack of a better word, run a facility to incarcerate individuals even a detention facility for juveniles that is semantically different. He also started his career as a probation officer and worked his way up the system in Utah before becoming their administrative director and through his experience I think he personally does feel that it should not be a part of the judiciary. I have the minutes that I could refer back to.
- ❖ And yet juvenile facilities are supposed to be rehabilitative in nature. When you get to punishment, you are talking about CYA and the state has that already. If you are talking about juvenile halls and ranches and camps, those are supposed to be places where probation officers are working with kids to rehabilitate them and that is specifically what the juvenile court judges are supposed to be involved in.

- ❖ I think Los Angeles had really strong views about that. Maybe in November it would be helpful for us to look at national models and revisit the concerns of the judges. Judge Friedman was very adamant about that and the presiding judges and court executives were very strongly against it. It would be helpful to revisit the concerns on the part of the AOC.
- ❖ Judge Friedman was adamantly opposed to facilities under the judicial branch. I don't share his concerns.
- ❖ Los Angeles is not gone. They have got over one third of the judges in Los Angeles and if we are going to get a comment from 1500 judges saying this stinks, that is why.
- ❖ Since they already oversee the facilities, who would be responsibility.
- ❖ It is their responsibility to once per year inspect the facilities. They do not have responsibility for the facilities. They have the responsibility to inspect the facilities once per year.
- ❖ It's just a little too far outside the box for some judges because they are used to making orders now that things be done to correct circumstances in facilities. In states where it is under the judicial branch, if they have a problem at the local area they call up through the state judicial branch and ask them to address the appropriate allocation through the legislature. Things happen much more quickly. It's just a different model that doesn't compute for judges here in terms of their frame of thinking.
- ❖ I think there were concerns about all of the maintenance and infrastructure issues.
- ❖ Judge Friedman said that he went into MacLeran Hall, he came out and said there was dilapidation, fire safety issues, health safety issues, etc. overcrowding, every thing you can possibly think of. So he writes up this nine-page inspection report that tells the county now that you have to fix that. Under the new model he would be writing this report to himself as a public document and ACLU would immediately pick up and the Youth Law Center out of San Francisco and then hang on to your socks. They are both coming after you.
- ❖ And don't commit anybody there knowing that the conditions are like this.
- ❖ And knowing that this is the judge whose oversight also has the authority to commit people to these institutions, so who do they sue? The state, the county and the judge because he knew the conditions were terrible and he continued to place people there.
- ❖ That is not the way things are now.
- ❖ True, but that was his statement as to why he didn't want any part of it.
- ❖ He is not the only one. Los Angeles is the largest court but I think we could safely say that there is a small percentage of judges in this state right now who would support moving the facilities to the judiciary.
- ❖ Very small.
- ❖ Maybe Judge Ochoa and two others.

- ❖ Oliver Wendell Holmes wrote many single dissents that became black oak letter law many years later, don't forget that.
- ❖ I've been involved with unification efforts for thirty years that finally happened, so yeah I understand that I'm saying today. It's our job to represent that.
- ❖ Whether it is right or this group feels it is right or not doesn't matter. It's reality. We have got to figure out some way to deal with it.
- ❖ The alternative then is to ship them to the sheriff?
- ❖ No. Of the models we have discussed, one is to shift them to the courts, keep them with the county with everybody but the facilities employees going to the courts, and then the chief probation officer still has the authority and you are in the same situation now where the county is funding the facilities and would like to and should be involved with the chief probation officer to the extent that the chief probation officer is supervising everyone in the facilities. It doesn't eliminate that issue, which is a huge issue, or to have a separate director of the department of corrections.
- ❖ Ours just shifted to the sheriff. There have been conversations where on numerous occasions it came up that possibly a better fit because of financial issues and this or that was to move correctional services that are currently under probation to the sheriff. That was discussed on numerous occasions.
- ❖ We run a juvenile camp that is not under probation at all. We have a three county Colusa, Placer, Solano county camp that is run by CHPA and they are county employees but they don't report to the chief probation officer.
- ❖ So is Fowl Springs.
- ❖ And, all of the facilities are not dilapidated. We are currently building a brand new juvenile hall and a new probation department so in two years we will have new facilities for the entire department. We will turn it over to the state brand new.
- ❖ I think we need to think long term and think of other alternatives. Judge Jahr presented a model and unfortunately he will not be here tomorrow because I thought it would be helpful to go over his model. We are going to have a discussion on ethical implications and concerns and then I thought we could go over the models that we have already looked at, including Judge Jahr's. Audrey will present his model.
- ❖ His model is creation of local probation service centers which would be separate from the local courts and not falling under the local court structure but falling under the AOC that would include the employees of facilities but not the facilities themselves.
- ❖ The employees of juvenile hall would be under the probation services center which would be under the judiciary however, juvenile hall as a building as a physical plant would still be a county structure.
- ❖ Who would pay the salaries of the employees in the juvenile hall?
- ❖ The state.

- ❖ The maintenance of the buildings would stay with the county.
- ❖ Yes.
- ❖ That was another model we discussed.
- ❖ Bill hasn't seen that one right?
- ❖ Bill actually mentioned that it was the physical plant that was more of a concern than the employees.
- ❖ I don't have any involvement with this any longer because I am no longer with an individual court, but I'm here representing the court's perspective and it is my job to convey to the rest of you what they think about these things. I don't think any of us are here for our own thing, we are here for the view of the people we are representing. That's why I have to say it.
- ❖ With the probation centers, who supervises the employees in the facilities?
- ❖ The chief probation officer.
- ❖ All of the employees of what is currently the probation department would move under the judiciary in Judge Jahr's model, however, the physical plant would stay the responsibility of the county.
- ❖ Operational costs, bricks and mortar.
- ❖ When you say operational costs, you mean maintenance and those kinds of things?
- ❖ Where in the slip and fall law suit the counties would be sued for defects in the building, the court because of court supervision.
- ❖ The purpose of the probation service center is to do what?
- ❖ I believe he was answering the concern about the ethical concern the courts had about not wanting to oversee probation. I think that is why there was the creation of another department. Although I believe our discussion, I'm not sure if this was the whole group or just as a sidebar, talking about how the administration having two separate entities might be too much and it might have to be folded under the local court.
- ❖ He is using the Arizona where the facilities stay under the control of the county and the costs of maintaining these facilities is part of the MOE.
- ❖ In Arizona the facilities are under the state judiciary.
- ❖ Except for the two major, urban areas.
- ❖ Remember we were going to let Arizona and Connecticut know that they had an unconstitutional system.
- ❖ How does that work that the county maintains the buildings and the courts take over supervision? We will discuss this more tomorrow.
- ❖ The other model is the probation officer wearing two hats, separating into a department of correctional facilities at the local level and then the probation services would fall under the judiciary. The chief probation officer would be half an employee of one and half an employee of the other, which doesn't solve the problems. Would be extremely difficult and I spoke to our employment lawyers about it and they said it was a nightmare.
- ❖ It doesn't work.

- ❖ How does Judge Jahr's model differ from the court taking over all of probation.
- ❖ The difference is not taking over facilities.
- ❖ There is another way to do that on the county level. Either hire someone to run your juvenile detention system or in the case of the small counties, have the ability to contract with the chief probation officer to do that job as a contract rather than an employee type thing. Is that a possibility?
- ❖ Yes. It happens all of the time.
- ❖ Just like some of the courts are contracting with the counties to do services for them.
- ❖ I think a further problem was in terms of probation officers some or all of them are correctional officers who work in juvenile halls or camps and are hoping to become probation officers.
- ❖ There are two sides to that. In some counties everyone is a probation officer including the ones that work in the institutions and then there are others the ones in the institutions are actually counselors which are not sworn per se other than for the hours that they are in that facility for the purpose of assault and things of that nature. That is the two dichotomies.
- ❖ I thought they were sworn.
- ❖ They are only sworn while they are in the facility or transporting.
- ❖ So there was a concern if one group were county employees funded by the county and the other are court employees funded by the court that these people might have difficulty transitioning/moving into probation positions. That it would give the chief probation officer less flexibility in terms of staffing and in terms of promotion.
- ❖ In our case, when we have problems staffing juvenile hall, probation officers come in on overtime.
- ❖ We also hire many people out of institutions.
- ❖ It would take away your overtime if there were two classes of employees, one county and one court and that was what the chief probation officers said. It would decrease their flexibility, limit promotional opportunities, if you are going to wear two hats, doesn't it make sense to have all of the employees employed by the same entity.
- ❖ So the Jahr model make sense in that case.
- ❖ And plus you are service oriented.
- ❖ That was the main argument of the probation people.
- ❖ That the whole education and rehabilitation effort with young people should have a continuum from institutions out into the
- ❖ The argument was that there is nothing different from having kids in an institution than having kids out on probation. You are doing the same service, you are trying to rehabilitate or provide services to them, educational and all of those other things that we are responsible for. So not having that separation was very important for many of us.

- ❖ So that supports having the employees in facilities paid by the state.
- ❖ Same as other employees and having the courts assume responsibility for those employees on the theory that they have an obligation to inspect the facilities. I guess what the judges are saying is that part is okay they just don't want the maintenance of the building.
- ❖ I think that many courts would not support that
- ❖ I think that Bill would not be opposed to having facilities employees under the jurisdiction.
- ❖ I was going to say that if it were just the sheets and the stuff like that, we are still responsible to see that the care and the maintaining of these juveniles meet a certain level so it has to be simply either maintenance of the building or no employees. Or no employees and no building.
- ❖ And liability.
- ❖ But where does liability come from in juvenile institutions? I think it would come from an action of the juvenile institutions officer
- ❖ not necessarily
- ❖ We have wards on wards with foul play, drugs in, guns in.
- ❖ That is not a building issue. It is a supervision issue.
- ❖ We will start at 9 am tomorrow. We are going to hear from Mr. Jacobson on ethical issues and ethical concerns. I think if we can regroup and think about what the objections were on the part of the AOC and the judges with respect to the facilities and how there might be some compromise position in there. We can work some more on our long term governance and then we can decide who we want to hear from in November on these issues. If we have a chance to work on any language, Audrey and Liz, in terms of the short term legislative proposal, that would be very helpful. We will revisit that issue tomorrow.

September 13, 2002

Long-Term Governance Model Ethical Implications: Mr. Mark Jacobson

- ❖ We are pleased this morning to welcome Mr. Mark Jacobson who will be discussing a lot of the issues that we have been working on.
- ❖ Mark is an attorney with the Office of the General Counsel and serves as the judicial ethics expert for the AOC and does numerous trainings throughout the year with the courts on ethical issues. He came to the AOC from the Commission on Judicial Performance where he served as an attorney for nearly eight years. He has been working on some of the questions that we have been grappling with. I have provided him with some minutes and he met with both Judge McCarthy and I to discuss the issues we have brought up over time.

- ❖ The handouts are materials that you judge types are probably familiar with already. They are excerpts from the canons, the code of Judicial Ethics and from the code of civil procedure 170.1 and those statutes deal with disqualification of judges in various circumstances. The ones that you would want to look at in terms of ethics issues, which I think largely involve disqualification issues. There are a couple of general overarching canons that are referred to. Canon 1 says a judge shall uphold the integrity and independence of the judiciary. Canon 2 says a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. Canon 3 C 1 deals with administrative responsibilities, a judge shall basically cooperate with judges and other court officials in the administration of court business. Canon 3 E deals with disqualification. Basically it says that a judge shall disqualify himself or herself in any proceeding in which disqualification is required by law and the law is the code of civil procedure and in there, there is really only a, as I'll mention, this comes up mainly in terms of liability issues that I think your committee has been discussing and the only statute that really applies in this situation as far as I can tell is 170.1 a6 which says that disqualification is required if a) the judge believes that recusal would further the interest of justice, b) the judge believes there is a substantial doubt as to his or her capacity to be impartial and c) which is the one that I think that really pertains most often when you are talking about liability issues in the probation context is when a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Let me just try to put that in context. I know that you have discussed a lot of these issues so I'm just going to discuss this very briefly and then if you have any questions I am happy to talk about your issues. As you can see from the language of the canons and the statutes, ethics is often a fuzzy area. There are often no clear answers. Let me just address briefly a couple of the issues that I understand that you have been grappling with from talking to Audrey and looking at the minutes of your meetings. In terms of liability, I think that under any of the models that you are considering and I don't know which models are at the top of list now but just from reading the report and reading the minutes you have the various models, the local model, the court model, the state model, from an ethics perspective if your concern is liability, in other words, people suing whatever entity it is, that would be the appropriate defendant, so in other words, if the court takes over probation and the probation employees become court employees then you have a situation where the courts might be sued arising out of acts by probation officers, probation employees or law suits pertaining to facilities, I know that is a whole issue in and of itself, who is going to take over the administration and oversight of the facilities. Any of these contexts I don't really think it matters which model you end up adopting. I think that when you have a

situation where somebody is suing the court for example if the court becomes the employer of the probation employees you have a situation where there is a very good argument that the court should not be hearing those cases. I think in other jurisdictions what they do is they get judges to come in from elsewhere. I think you have talked a little bit about the trial court employment protection and governance act. In there just by analogy, situations arise where it would be a potential conflict for the court to hear some of the cases that arise in that context because the court's employees are involved. So there are different mechanisms in there. In collective bargaining situations, they have a panel of appellate justices that hear those cases. In other contexts they have if there is discipline being considered they have someone else come in and hear the case rather than the court itself. So I think in many of those situations if not most of them probably the appropriate thing to do would be to get an assigned judge. I know you are familiar with the assigned judges program. One way or another they get somebody to come in and hear the case. Or, it gets sent to another county. I think that pretty much addresses those situations in which looking at the statute, a reasonable person aware of the facts would conclude that the judge couldn't be fair and impartial. So in the liability context, I think, it's not always the case maybe if there is an employee that is sued, I'm not so sure that in the probation context in other contexts just generally, when the court is sued based on the act of the employee there are certain situations where the court would probably not necessarily be disqualified. In most circumstances, if you are going to have court employees testifying, that presents a problem. I don't think the judge can be fair and impartial. Likewise in the probation context, even though the probation system is fuzzy now, and again I don't know what models you are considering, but people are not really clear if the probation officer is an employee of the court, are they just an arm of the court or are they a part of some separate entity. I'm not sure that it really matters because looking at the reasonable person standard, a reasonable person whatever that means might not be making those distinctions anyway, so just generally looking at the situation I think there is a good argument that a reasonable person would conclude that the court or the judge wouldn't be able to be fair and impartial. So I think again in most of those situations you would be looking at getting an outside person to get in.

- ❖ Your bottom line basically is with respect to court employees, with probation they become court employees. If you have a situation where a probation officer sues the court over an employment issue, the way that is handled now with the court employees is that they sue in Santa Clara, you bring in an assigned judge so a judge from Santa Clara does not hear that case because our cannons provide that we have to hear every matter from which we are not disqualified. My observation has been and you have

worked for the commission for eight years, that is our disciplinary body, judges used to stay on every single case and over the years I have seen judges who because of this particular section which reads “a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial, the judge may say I can be fair, but the reasonable person looking at this, if I am sitting on a case involving the child of a lawyer that I know through the school or my church, are they going to think that this is improper. Well, 10 years ago everyone would have said they could stay on the case because they don’t know the kid, etc. Now, there has been a lot going on and the commission of late, I’ve been reading about all of the various hearings going on with judges throughout the state, I think the judges are more inclined to get off cases where the reasonable person on the street would read and say there is some relationship here so they have to get off. I would think that all judges would get off a case involving one of their employees, whether it is a probation officer or court employee, so you are going to bring in an assigned judge and the AOC handles that so you simply call and ask for an assigned judge and there are people at the AOC that assign judges from other counties. So that takes care of that situation. You have a slip and fall, a death in the juvenile hall or ranch facility, if those employees are court employees, they are going to sue the courts and the judges and the same situation applies. Right?

- ❖ Yes.
- ❖ You call up the AOC and get an assigned judge. If you have a collective bargaining issue with an employee, the statutes have been amended to provide for a hearing by an appellate justice. There are six around the state that have been trained to hear these issues. I have talked to a couple of justices and they normally pick a justice outside of that appellate district. So that is how they handle the labor and employment issues, and that is how you would handle the recusal issues.
- ❖ Now here is a situation I’m sure you have heard about this because the judges are very concerned about this. If the probation officers become court employees, this is your employee, you have officers supervising people out in the field, you have a probation violation hearings, you have ten probation officers coming in and testifying under oath saying that they supervised this particular person, they didn’t show up for their appointments, they didn’t show up for their hearing, they didn’t do their drug testing, they have committed a new violation of law, that is why I have filed this before the court. So here is the court assessing the credibility of their own employee and making a determination as to whether or not there has been a probation violation and probation officers write and prepare all of the court reports where they make sentencing recommendations to us, so now they are making sentencing recommendations and are we going to disagree with recommendations from our employees and what other examples? Any time

- that you have to assess the credibility of your employee and or make a determination as to whether you are going to follow the recommendation. Maybe the recommendation is CYA and the judge says they don't think it is really a CYA case, but the attorney is saying, well of course, the probation officer who is your employee is recommending CYA, so you send the kid to CYA. Would you have sent the kid to CYA if your employee had not made that recommendation? Those are the kinds of questions the judges are raising.
- ❖ What I think is that you would want to make a distinction between judgment calls and credibility issues. If you are talking about a judgment call, in other words the probation officer recommends CYA or whatever the probation officer recommends, I don't have an issue with that. I think that is the way the system is set up. I think that you would be hard pressed to argue that the judge would have to disqualify his or herself in that situation. As opposed to a situation where you are assessing the probation officer's credibility. For example, in the situation where you have a probation officer saying you didn't show up, you didn't do this or that, you told me this, etc. and then you have the defendant saying, that's not how it happened and having the spouse come in and say, I never said that. That is a different issue. I do have a concern about that. I think in that situation there is a good argument that someone else should be presiding over the probation violation hearing.
 - ❖ But sometimes there is a crossover. Very often, particularly in, juvenile there is a crossover because the contents of the report may be based on the perspective or a record that comes into issue. As the example was given, well you didn't report, well I did report but you weren't there and I left something with the supervisor and then at the end of the report comes the recommendation but the recommendation is based on what may be contested factual information in the report. So often you don't know whether it is just the recommendation you are contesting or if it is the content of the report that the recommendation is based on.
 - ❖ But how do you resolve those credibility issues, first. First you have to resolve the factual issues, then you consider the recommendation.
 - ❖ But it is all in the same proceeding.
 - ❖ Okay, it is just because I am not familiar with how that works. So if you have some sort of factual dispute, how do you resolve that? Do people testify?
 - ❖ Yes.
 - ❖ And then if you resolve it in the juvenile's favor, then presumably you would reassess the recommendation.
 - ❖ But it is still the credibility issue that comes into question. Now I have found that my officer has not been accurate in terms of the information in the report.

- ❖ I understand that but I guess I still think you can make the distinction because what judges do is they judge. So I'm still less concerned about the judgment issue in other words, the recommendation issue. And, go back to resolving the factual dispute because like you said, you may be in a position of having to conclude that your probation officer is not reporting the facts accurately and so that is why that causes me concern. I think you just have to take that step first and then depending on the outcome of that, then you have to resolve the disposition issue.
- ❖ It already happens that we have our employees as witnesses sometimes. If you are doing an ORBR hearing they may call the pre-trial services unit person who conducted the investigation and is making the recommendation as a witness in the proceeding. That is a court employee, so I'm not sure there would be that many credibility issues in that kind of circumstance. You may have to ferret out factual issues and there may be misunderstandings but in terms of straight credibility...
- ❖ It seems to me that another way to think about the ethical issue and the question ultimately being whether a reasonable person would conclude that a judge could not be fair in that situation, would be to say that in situations where the employee has a direct economic or liberty interest in the case that the judge should not be sitting on that case. Where you have a situation where the employee is a witness and it is just a matter of credibility issues related to a conclusion which doesn't have a direct impact on the employee, so it is not the employee filing a civil suit, it's not the employee being prosecuted, it is the employee testifying in a case in which someone else has the ultimate interest. I think there, you could make a strong argument that a reasonable person would not conclude that this is a problem with the judge sitting on the case.
- ❖ I don't think it would be made anymore of an issue than it is now. There is that perception that probation officers are officers of the court and a lot of times you will hear that sentiment, well of course a judge is going to go with that recommendation because you are his court officer or in courts where they testify as to the factual information in a probation violation, he is going to go with you because you are his probation officer/court officer. You hear some rumblings about that every once in a while but it is not really made into that big of an issue and I don't think if we go to a new system, it is even going to be considered any further than that. As the judge was saying, it is not like we are benefiting financially from our recommendations or from our testimony whereas the argument can be made, we are professionals we are peace officers we are objective we are giving our testimony. I don't think it matters that we are also employees. I think that everyone will consider us objective for the most part, again if we were benefiting financially from our decisions or involvement, then I can see that argument but not in our normal routine.

- ❖ Isn't the difference now that as probation officers we are simply fact gatherers for the court, if you will, and that our reports are actually not a document or what do they call it a hearsay document and the information in the document is assessed by a judge. We do not have the direct link to the client. The judge ultimately then is making that decision based on that hearsay document, which can be from us or the other side. So, would that change simply because we became a court employee?
- ❖ I don't think it would. I don't think any of these points that you are making would change under these models that you are considering. I think you still have the same issues and again, I think it goes back to the distinction between assessing the facts and deciding what the outcome is. So like you just said, that is what judges do. They decide what happens in the end. So that is not going to change whatever model is ultimately adopted. What I was saying that when you have a factual dispute between a probation officer and the defendant or juvenile that is what caused me a little concern. Even with that, I don't think that changes depending on what model you adopt. I think you still have the same issues either way.
- ❖ Because you would think that the issue would arise whether there is a direct employee relationship or an indirect relationship.
- ❖ Right now we have an indirect relationship.
- ❖ Right. Family law mediators might be called in as witness in a proceeding. They are court employees. Most of us have sheriffs for bailiffs, a sheriff is called in on as a witness in a case and the sheriff is there as the court's protection officer and now as deputy sheriff called to the stand. Is there some problem with that? You can imagine all kinds of issues, but judges are required to do that on a daily basis. There is really two issues here. The one that you are talking about having to do with credibility or whatever and the efforts of the judge having to do with the court employees. The other issue that was really brought out is that if they take the facilities and have a responsibility to inspect the facilities and then something happens, what is the ethical situation there?
- ❖ We have an existing obligation under the institutions and welfare code to inspect the facilities.
- ❖ But you presently don't operate the facilities.
- ❖ Right. And one of the proposals is to do that and that is the other question that I think really came out rather than the one we just discussed.
- ❖ Yes. Potential conflict for judges having the responsibility to make sure that the facilities are adequate and perhaps make orders for conditions in facilities. How does that work if the courts own the facility?
- ❖ It would work in the same way.
- ❖ It is less an ethics issue and more a compliance issue. As I understand it reading section 209 in the Welfare and Institutions Code there is an obligation now to inspect the facilities and then to go through that

procedure if you find that the facilities are substandard, you first notify the facility and they have a certain time period to fix it up and ultimately they don't do it you can't send someone to that facility anymore. I think that that doesn't really change if the courts take over administration of the facilities as opposed to how it is now, where they are still responsible for inspecting the facilities.

- ❖ I think that you have the same issues now under the code that requires the courts to inspect the facilities. So, I just don't see that that causes other problems than already exist.
- ❖ Under the existing structure I can imagine a scenario where a juvenile court judge inspects the facilities, writes a negative report that the facility does not meet the legal standards. Time passes, conditions aren't changed, a lawsuit is filed, the plaintiff's attorney calls the judge who generated the report as a witness. Now we have a separate provision in 170 that says where the judge is a witness, clearly the judge can't sit on the case. We know that. And also the judge's colleagues cannot sit on the case, so what you do is get an assigned judge and go through the same process.
- ❖ The reality of the judges literally inspecting the juvenile hall is really a fallacy. The true inspection of the facilities come from the board of corrections who have standards that have been established by the board of corrections which is an independent body that oversees the standards in not only juvenile hall, but the ranch, camps and schools and jails. You have to have "x" number of square feet, you have to have so much nursing staff, you have to have so many people on duty when you have a population count of "x". In reality, judges never really come into the loop of being the sole person to say that your facility is perfect because they don't go out with the measuring stick, to measure the square footage, etc. Judges don't do that and never have, never will. The reality is that the rules that govern the inspection of the facility belong to a state entity and I think we are kind of getting too far into this issue of liability and the judges are going to be held on the carpet and whether or not their ethical values are going to be held in place, the reality is you lie, you die is the rule of thumb in ethics. The day you ever get up and say I swear to tell the truth and nothing but the truth and you lie, you are dead. You will never be a peace officer again as long as you live, you will never be a judge as long as you live, and you will never have credibility in the courtroom as long as you live. I think we are putting too much into this. To a degree we are trying to find a way to get out of having the courts be the overall overseer. I think Judge Ochoa said yesterday, with Oliver Wendell Holmes, he was the single dissenting vote and twenty years later he was the black and white image of what you wanted as far as your law. And Judge Ochoa has taken on issues that a couple of other judges that we have had here have not wanted to even deal

with. Anyway, I really appreciate your comments and the ethical standards and cannons but I think we are putting too much into this.

- ❖ Is it reasonable as one of our recommendations to take out that statute that says the judges have the responsibility to inspect the juvenile hall.
- ❖ From my perspective you wouldn't want to take out that statute because it's been long on the books and because the juvenile court judges are charged with that responsibility. But I think that the points Alan raises are really good points. To address the statewide concerns of the judges, I think I mentioned two years ago when we started, I will just repeat it again for our newer members, when you are a judge in your courtroom everything works a certain way. You have been an attorney and then you become a judge and you often do things the way that the judge did it before whom you used to appear. So you have a way of doing business and when things change, like court unification, these are very unsettling events for the judiciary because our job is to decide cases efficiently, effectively based on the information we have and you have to do it today. You are not thinking 10 years down the road. So this process has been very unsettling for a lot of the judges who have been used to having things done a certain way. You have a probation officer that has been assigned to the court for a number of years and you develop a working relationship. Lately judges have been on the firing line in terms of ethics. We have recommendations forthcoming, recommendations from hearing officers and a panel of three judges, hears these cases and makes recommendations. We have a couple of recommendations pending, I believe, recommending removal of the bench from several of judges. Never in my career have I seen so many judges at the same time with these recommendations. Judges want stability. They want to know what case can I hear, what case can I not hear. What case am I likely to get flack on if I hear this case. Well, obviously if you hear the case of the traffic ticket of your relatives, you don't want to do that but you start going further out. What can I do, what can I not do. This idea of having your court employees testifying in your courtroom, a lot of judges just said you know, this is just not okay. As Judge Ochoa says, first of all, we do that all of the time. I think if the task force decides to go in this direction, we have to explain to the judges on the ethical issues that we do this all of the time. In family court, your mediators, I hadn't even thought about them. You send them over to the family court mediators, they talk to both sides and make a recommendation on custody and visitation issues, we bring in the mediators, they say I went to the house it was inappropriate for a three year old, the mother did this, the father did this, they recommend "x". We make a decision, we do this all of the time. Many courts, the sheriff's provide courtroom services and the next thing you know your assigned deputy is in the field and he is coming in on a drunk driving case. I think many judges would disqualify themselves if their own bailiff who

had worked with them for 10 years came in. You just send it to another judge. Maybe you don't want to hear that case because that person is your deputy, but you hear all of the other cases from the other deputies and they all work together so we do it all of the time. I think that that kind of information would provide some comfort in terms of the ethical concerns. And then the point that Alan makes is it is not like the judges are going out and setting the standards in these facilities. The board of corrections does that. Here are the standards that is their responsibility. The judges have long had the responsibility to inspect the facilities and that makes sense because they are committing the minors to these facilities and most juvenile judges want to go out to the facilities and see the facilities and see the services, see the operations so they can make decisions that will benefit the juveniles. I think that if the judges get the information with respect to who has the responsibility of setting the standards and what are the standards and the information that there may not be ethical concerns hearing the testimony of witnesses although I know that you have raised a few reservations about that because if judges couldn't hear the testimony of probation officers on probation violation matters it would bring those calendars to a standstill. You couldn't get judges from other counties to come in to hear every one because there are thousands.

- ❖ All we need are the judges to be a little more flexible. Right?
- ❖ I think that there is another prism to look at this issue through other than just the cannons of ethics, the disqualification statutes and the inspection statutes, if you look at the standards of judicial administration on what juvenile court judges are supposed to do and these are relatively new, the last decade, judges are supposed to be involved in wide ranging efforts with probation and educational resources and community resources to develop a program and help at-risk youth and the juvenile hall, the educational processes, the mental health assistance that kids are getting there, the kinds of counseling, that is all part of that mix. I think a juvenile court judge should be involved in what is happening in the hall. That is part, those kids are obviously at-risk, they are at the forefront of the at-risk population and they are in your court. You have a responsibility to know what is happening with the kids in the hall, kids in the camps, and on the dependency side to make sure that you have adequate resources, working with your CASA volunteers, developing foster families, there are judges in counties who are involved with PR efforts to recruit foster parents because they don't have enough. That is what judges in the juvenile setting are supposed to be doing. It is much more a proactive role than the judicial frame of mind and if you look at it through that prism, having control of the facilities, being more involved in what is going on in the facilities, being proactive in terms of remedying problems that exist there, maybe that is just what judges should be doing. I think that is a valid prism to view the issue through.

- ❖ Let me just say that I think that is a good point and we actually talk about some of these things. We do these ethics trainings around the state and we talk about that community outreach aspect of it and we try to explain how you balance the community outreach obligations under the standards and with the canons. So we are aware of that issue. Let me also just say that no judge has ever been disciplined, and as far as I know even investigated for, presiding over a case where a probation officer is testifying.
- ❖ How about failure to inspect? Do we have any complaints for failure to inspect?
- ❖ I have not heard of that coming up either.
- ❖ With regard to the probation officers reports and testifying and also this comes up in the family law context, the only issue that I am aware of that comes up is in the area of ex parte communications. We have talked in the trainings on this as well where we suggest that judges shouldn't be talking to probation officers or mediators outside the presence of the other side. That would be an ex parte communication. So these people submit reports to the court, everybody gets a copy of it and then the hearing is scheduled and everybody has a chance to address it. So that is really the only context where I have seen any of this come up in terms of a ethic violation. So I don't really think that there is much concern about it.
- ❖ To the extent though that would remove a judicial appointment because of that? I mean have you seen this?
- ❖ No.
- ❖ I was going to say because it seems to me that as soon as the judge understood that it would not any longer be an issue if it even got to that point.
- ❖ There was one case a number of years ago where a judge was privately admonished for having an ex parte communication with a probation officer. I don't even know if it has come up since. This was in the mid 90's or something like that.
- ❖ So, I agree to a certain extent that there is really not maybe as many issues as some people are concerned about. Or, to the extent that there are issues, they are not insurmountable.
- ❖ I think that one issue that 10-15 years from now we may need to confront, and I don't really think it is an issue now but I'll raise it because it may get raised at some point in time. That is that if the courts take control of the facilities, if that is done through the AOC in some sort of an administrative model and the AOC is ultimately responsible for the assigned judges program, there could be a problem there. But as I understand it there is a similar issue now that the AOC has resolved. There was some question about whether the assigned judges program should go to the general counsel's office.

- ❖ Right. We have already addressed that issue. The assigned judges program was part of one particular division of the AOC. The plan was to dissolve that division and put the pieces of it in various other divisions within the AOC. There was talk about putting the assigned judges program under the OGC. The concern was that the OGC also includes the litigation management people so they are involved in the litigation and often those cases against the courts need an assigned judge. So ultimately the decision was made not to put the assigned judges program in the OGC. I don't really see, the decision was made that it was okay in the broader sense to have that agency doing both of those things but they are in different divisions so I don't think that that is really a concern either.
- ❖ So, who is going to tell Sheila that the concerns are perhaps overblown?
- ❖ I guess a lot of the concern comes from Los Angeles about taking over the facilities. Are there other ethical issues that we haven't discussed? I mean Los Angeles has so many facilities.
- ❖ I'm not sure that they are as much ethical issues as they are other issues, practicality, the facilities are in such horrible shape that it is a fight. If we are charged with the inspection, supervision, management of that I guess it makes it a personal ethical consideration to commit someone to a facility that you know is inadequate and that is not being managed properly. It becomes a real difficult kind of thing. And then if you are mandating probation to do certain things that probation does not have the funding to do at what point do you not use that as a resource or as a viable dispositional alternative when you know that it is not being run to standard, not because of the incompetence of the probation department but just because there isn't money to do what needs to be done. So do you do what you don't believe to happen as a rehabilitative process actually taking place when it is not. To the extent that you are required to do so. As far as the spacing issues and stuff, the code may say that you need 63 square feet for a single bed but you know that you have four kids in that room and the beds and somebody in the hallway on the floor at any given time of the year. The numbers are down but it is certainly a fluctuating kind of thing I just think it is an administrative kind of ethical and legal thing that the judges feel would not be in their best interest to be involved in and to be able to do. The other side of it as well.
- ❖ Everything that Judge Brown just pointed out is absolutely accurate. The reality is that the Board of Corrections understands that we have facilities that do not meet the standards. They have put trigger points into every one of those issues. Whether you fail to meet health standards, dietary standards, mental health standards, space standards, whatever. They have more regulations than you want any part of. Between title 15 and 24 they have everything figured out and what they do, and I even fall into this group in San Diego, is that every month that we are over populated, which

is every month, where I have a bed capacity of 359 and I run between 470 and 500 every month. I have to give them a suitability plan that tells them that I am doing everything I can to curtail those conditions that I have violated. Judges don't tell me a thing. Judge Milliken, as great as he is, he never writes me a letter saying Alan, get kids off the floor. What we do is when we put them on the floor, we put them on 18 inch mattresses which is approved by the board of corrections as a suitable place to put them temporarily. I'm building a 380 bed facility in East Mason right now which helps me immensely in that I am dealing with this problem by focusing on a solution. So counties, we are not blinded by the fact that we have problems, we are looking for solutions and when you go to your board, your judiciary, your CAO and you say this is a problem, we all pull together and we try to make things different and better. I think in our process here, we need to look at the other side of what is already in place and it governs what we do now and see how it would fit if the judiciary were to take on the oversight responsibility of us. I think we are on strong stable ground, I really do. There is always the fear of a lawsuit. Every time I get the fed ex across my desk which means I just got another lawsuit, I say get a ticket and get in line. I probably, not I personally, but the county wins probably about 95% of the lawsuits that are filed against the probation department. The suits are frivolous, they see a big pocket and they are trying to get into it.

- ❖ I certainly understand Judge Brown's concerns though about the fact that there probably is not a lot of rehabilitation going on in a facility where you have four kids in a room built for one and those in the hallway. Probably Los Angeles is one of the counties that have some of the oldest and worst facilities and most costly to replace. It may take time for that to resolve itself, but I definitely can understand where you are coming from.
- ❖ We end up suing our own employees. I'm going to sue the probation officer who works for me because the juvenile detention facilities are inadequate. Then, I can't detain anybody. I have to but it is like a revolving door. What do you do to resolve that situation?
- ❖ When we were looking at some of the national models, I think it is Arizona, that I remember one of them said that with state funding facilities and probation and if you have the judges working with you and especially in that state which I think is Arizona if you have the chief justice going to the legislature saying look we have got ten kids on the floor we need money for these facilities. We need "x" amount of money to build these facilities and maintain them. If you have the strength of the chief justice and the judges asking the legislature to fund these facilities, you have a lot more strength than if you have an individual county saying that their facilities are not adequate we need more money. That was a lot of the strength in having the court assume responsibility for the facilities because if you want stable and adequate funding a good way to get it is to have somebody advocate on

your behalf that has the ear of the legislature. Those that are on that system felt it was financially to their benefit.

- ❖ I think that is an important point. Obviously, it isn't applicable this year and probably not next year but if you look back over the last ten years and hopefully if you look forward over the next ten to twenty years, the state generally will be in a better fiscal position than the counties, not necessarily every county because there are some counties due to the economic demographic may be in better shape even in good years than the state, but on the whole the statewide system, I think the state will be in better equipped to respond to the pressures brought by the chief justice and the AOC to fix some of these problems that an individual county might. I realize it is different but you can also make the similar case for court facilities. As court facilities transfer, hopefully they do to the courts and to the state, subsequent issues regarding access to the courts, handicapped facilities, the whole nine yards for which we have been sued and have had to pay some significant outflow of funds. Those will be court issues in the future but I think the courts are be able to better recognize some of those needs and hopefully be able to get the funding from the state to fix them.
- ❖ Our state association has gone for capital facility bonds for the last seventy years. Our estimate is 688 million dollars is necessary not only to fix Los Angeles, but every other county in the state to just bring us up to standards. My juvenile hall was built in 1954. It was built for a 1954 population. I have prop 21 cases in juvenile hall. They don't belong in a 1954 facility, not only for the ward but for the staff that have to work there. We are trying to get it fixed. Two years ago the state approved 340 million dollars to build Delano state prison. That is a 2400 bed prison. That 340 million dollars would have fixed Los Angeles. They could have literally torn down every one of their facilities and rebuilt them as state of the art and would not have a problem for the next 50 years.
- ❖ And arguably if they did that they would have rehabilitated enough young people so that you wouldn't need a prison.
- ❖ That goes back to the reasons behind this task force to raise the visibility of probation, a voice for probation, and ongoing voice in whatever framework, an advisory committee, an advocate for probation, statewide standards and guidelines, the ability to really be heard when you need money for these facilities. It also ties back into the origin for this particular task force.
- ❖ Mike, we remember that there was a discussion that the AOC was not interested in assuming responsibility for facilities and we have been talking a lot about the courts assuming responsibility for probation employees in the courts, in the field, and in the facilities. Could you refresh our memories as to what the concerns were?
- ❖ Yes. That is what I've been doing for the last hour. I think there are two things. I have been talking with Bill Vickrey who has been representing the

administrative office and council's view at this point. I think there is a general concern that it places the judiciary who is typically the neutral arbiter into a position potentially of advocacy and responsibility that it may not be best suited for. However, recognizing that the task force continues to keep discussing the issue, one of the things that we did is to call some resources back east and some academician and some research folks who have been looking at the issue of juvenile detention throughout the country and they are going to be sending us materials and information on trends in terms of how institutions and the responsibility for institutions maybe are changing in states. We are going to go back and look at the issue again and I suspect we will give that information to Audrey and out to the task force. But fundamentally there is a real opposition to moving the judiciary into a position of advocacy and responsibility that comes by virtue of the responsibility for administering institutions and away from its traditional role. But we are going to take another look at the matter because it obviously continues to be of interest to this committee.

- ❖ The juvenile judges now have to inspect the facilities, so what does that mean. They just go look at them and say ...
- ❖ We have a check list and we look at a book to see if anyone has been over detained. There are about 20-30 questions on it, has anybody been detained over four hours at the local holding facility, do they have bathrooms, do they have water, do they have a place to talk to their attorney and a place to talk to their parents.
- ❖ And because of the standards of judicial administration are supposed to advocate for improved programming, improved facilities for programming for at-risk kids.
- ❖ But to move from that relatively benign advocacy position to one of direct responsibility over the 724 administration of the facilities and the staff and all of the associated issues is a significant change.
- ❖ How is that different from being responsible for courtroom, court employees and court facilities?
- ❖ Court facilities and court staff are typically, and I am parroting the view here, directly accountable for the operation of the court. What we are now talking about are institutions that are not established for the support of the court, they are established for a far different purpose, and that is rehabilitation incarceration treatment and those kinds of things which have historically at least in this state and in general been not responsibilities of the court. We are concerned with our operations not providing services to those outside the system. Arguably if we are going to take this analogy forward, we ought to run the jails.
- ❖ That would be fine. The county supports this.
- ❖ I told Bill that that was exactly what you would say.

- ❖ The idea is that being involved at the juvenile level prevents them from graduating hopefully to the adult level.
- ❖ It's a cultural change and quite frankly, understanding that other states do things differently, and that is why we are going to go back and take a fresh look to see what the trends are. Are there systems moving towards the courts? Bill has some contacts vis a vis his prior experience as a juvenile system administrator and national contacts, etc. We are going to go back and take a look in fairness, but fundamentally, there is an opposition to moving the judiciary off of being the neutral arbiter. We can talk about bringing in out of county judges but fundamentally, the issue is that now you are moving into an area where you are going to have to be out there advocating for resources, support and issues outside the operations of the court into new areas and that may not be suited to the role that courts have historically tried to maintain for themselves.
- ❖ To some extent, outside the operation of the courts, juvenile judges now when you are handling juvenile matters, you have to be involved in and often direct the services to be provided. And, probation officers have been telling us on this task force that they need the authority over both employees and facilities in the courts because it is a continuum of services. The juvenile judges are responsible for the educational issues and services provided in the juvenile halls. So the only difference would be basically assumption of responsibility basically for the buildings to a certain extent.
- ❖ If they are not getting educational opportunities in juvenile hall, they are going to sue the courts and the county.
- ❖ I think there is a big leap between being an advocate for proper resources and being the one providing the proper resources. If the court is responsible for the institutions, you are now responsible for providing those resources. Not advocating, not appearing before the board of supervisors or the board of corrections, you now become responsible for providing those resources and that personally at this point is a far different position to be in.
- ❖ And it is. Instead of making an inspection report and doing criticisms and ordering the county to fix things up with monies they don't have, instead you are calling the state judicial branch and saying you have deficiencies here and seeing if you can work this into the budget because we need it fixed. That is what they do in Arizona.
- ❖ In Los Angeles, the county provides the educational resources in the hall. The court doesn't get involved in that.
- ❖ The county office of education.
- ❖ I think that is the norm but also by statute if the kids educational needs are not being met you can join the county schools in that juvenile court action and make specific orders.
- ❖ When you say you are going to call the judicial branch, then it is us. So we are not far. That is the difference.

- ❖ I know and it means that the chief has to go in and say I have deficiencies as priorities in these counties, and that is what it would mean.
- ❖ I think one of the arguments is that, we have talked for two years about probation in general and to a great extent at least in the beginning about probation services and periodically since then, we have all recognized that there are not enough resources to provide the legally mandated level of services that are currently required. So granted it is a shift but maybe it is not such a bad idea. Maybe putting the judiciary in a position where the influence of the courts can be used to drive government resources is not such a bad idea.
- ❖ If you take San Diego's adult caseload alone where you as a superior court have asked me to supervise, I have 27,000 cases. 85% are felons the other 15% are misdemeanants but serious misdemeanants, probably reduced felons. I supervise about 2,700. A little under 10%. If you were to give me the staff to supervise that population, I have 1500 staff, 1100 sworn, I would need another 1000 staff. With a 134 million budget you are going to give me another 100 million. No way. To use that as a snapshot of the bench taking over the responsibility of the administration of probation departments. I think we would have a stronger voice in getting better services to populations that are more at-risk.
- ❖ Don't you think the judges would rely on the chief probation officers to do just what you are doing now, which is complying with the standards that are mandated.
- ❖ To the best of our abilities.
- ❖ Would there really be a drastic change? Basically the judges would rely on their chief probation officers to be fiscally responsible and to meet the mandates. If they don't, right now what happens is you do your inspection and you say, I guess there have been counties where the board has been ordered to provide certain things so you are looking to an entity that normally doesn't have any money. The change would be that the courts would be looking to the state. So that would be the change. Right? Is that over simplifying?
- ❖ I think that if you look into the system versus each individual county out there on their own. The state would be looking at the big picture.
- ❖ Would that improve the condition of probation?
- ❖ I think so.
- ❖ Would that be better for probation than what exists now?
- ❖ Absolutely. We would have a unified voice at a high enough level to where that funding if it were available would possibly then be heard.
- ❖ And you have just posited to big it's and what's and whoever's in there. The fundamental issue is to shift probation to a more stable funding source. Arguably, unless we are going to say that chief probation officers have been totally inadequate and ineffective in advocating for resources, which is

- not my opinion of the case, we are going to have the same advocacy issues and hurdles in the new arena. Instead of being against parks and recreation, you are going to be up against the department of corrections, the department of health and so on. That is the issue that we are having as a branch. We have been able to do better because the source is better and more stable. I wouldn't say that by virtue of going from the counties to the state we have become better advocates or we've been more successful.
- ❖ We have only been able to build new facilities in the last two counties I have been in because of state money, not county money. And that advocacy came through the state being able to appropriate that money.
 - ❖ If the discussion was that we ought to take the institutions because we can attach them to a more stable accessible funding source, that is great, but I am not sure the courts are going to be any better or different in advocating for resources than where we are today. You just want to shift the funding source and that is fine to say that. That we think that we are going to have a better chance for success because we have more accessibility to funds. To say that the court is going to be a better, stronger advocate, I'm not sure that is correct, we have our own problems advocating within the current system because we now find ourselves in a different arena against education. Half of the bucks go to education regardless, right? The economy approves 10 billion dollars tomorrow, there is only \$5 billion of that we can touch. We have our own issues, I wouldn't say it has gotten easier. It has gotten better but I wouldn't say it is any easier. We have just as many hurdles to overcome and we have our own issues trying to create a statewide perspective on things that our funding source understands. There is just more money to go around and we are a smaller piece of the pie.
 - ❖ But the big issue this all started with was that probation officers work for two masters. If you are advocating that the probation officers work for the courts but the facilities don't we are back to two masters.
 - ❖ So either it goes to the county or it goes to the court.
 - ❖ I understand the conundrum.
 - ❖ An alternative way to think about this is the idea of a state department of probation.
 - ❖ That was the model that they asked me to design and I liked it.
 - ❖ This will I am sure be our largest issue in November so I think it is helpful that you are doing additional research and looking at trends and I know we will be looking at what are other states doing that have assumed responsibility for facilities. How are they handling those issues? I don't know if I should ask Audrey this or if this is something that you might be able to help us with, what ethical guidelines are provided in those states that have assumed responsibility for facilities. Do they have ethical cannons, rules, codes, that address those issues? Are those states in a better position with their facilities since they have assumed responsibility? Of course, the

- only problem that we found when we did our national survey was that there is no state like California. You can go to Arizona or New Jersey or some other states and what worked great for them, will not work for us. You look at some of the larger states, and they told us that they have a lot of problems. There is no state quite like California but we can at least see in those states that have gone to this model, do they have more money, stable funding, are there facilities in better condition? What ethical problems have presented themselves? What liability issues have presented themselves? What I hear you saying very strongly is that we are doing so much right now in terms of assumption of responsibility for facilities, interpreters, court employees, the time for a huge issue like this is not now. There is so much going on, we have just transitioned to state funding and there are lots of advocacy issues and we in the judicial branch have all been advised about the lack of funding, so this isn't a good time for anybody. But in a couple of years, hopefully, this is something that we can start looking at down the road as something that might improve the condition of probation and the juveniles in our facilities, and the facilities if we look at the issue of courts assuming full responsibility. They certainly have a lot of responsibility right now for the facilities and I know most juvenile judges that I know are always out in the facilities, over at juvenile hall, some have lunch there and spend time with the juveniles. I think you mentioned in your county that you have a judge that comes out to the ranch, more than probably necessary. The judges have a great deal of responsibility already.
- ❖ And we are going to have to start now to generate the long term support behind this regardless of the financial condition this is still going to be a long term multi year project. I keep saying it took seven to ten years to get state funding. We need someone to champion the cause. So that is okay, we have to address the underlying premise regardless of how long it is going to take about whether this is something the judiciary ought to do.
 - ❖ Because you would only want to make the recommendation if it would be an improvement and a benefit to probation, the county, the courts, and the juveniles. If it doesn't satisfy all of those concerns, then we certainly wouldn't want to think about making that recommendation. If we can look at each area and determine to the best of our ability based on other experiences and our own experience it will improve generally the condition of all of those involved, then what are the obstacles and the hurdles and I think in our next meeting in November, maybe Mike and Sheila can represent the AOC perspective and maybe the judges can represent the judiciary
 - ❖ The other thing is and I wish Rubin were here because he would probably chime in, the other thing that has to underlay this is what is this going to cost. When you talk about trying to transfer something of this magnitude people are going to want to know what the exposure is and we have yet to

- talk about this. Say it is 100 million dollars, say it's a doubling, we are going to need that other kind of, I mean quite frankly, we are not going to sell the general policy premise to any legislator or the governor in any administration unless we can identify what their exposure is.
- ❖ I'll chime in. I think from our perspective we need to know the financial piece before we can responsibly make a recommendation to the state. I don't think you can just say this is the model that works if we don't know what we are talking about and we don't know the fiscal side, but also if we don't know what it is that we are transferring because I don't think we have quite yet defined it. I think we have a good start with the laws and mandates list, but I don't think we have quite yet defined what the core probation services are that would transfer. Perhaps there are some that would remain with the county. We haven't done that yet.
 - ❖ If in fact we are headed in this long term direction, which is fine, we need to do some of that underlying work behind it to support recommendation and disclose the full story to the policy makers.
 - ❖ We still needed to know what the impact of the decision is. I think that is something we also need to work on and have in mind as we are making this long term recommendation.
 - ❖ Certainly we are talking about a very dramatic paradigm shift if we move in this direction. I just want to make sure that I understand Mark correctly. The perspective you have given us is that under virtually any model that we have imagined or talked about issues of liability and concerns over disqualification or judge issues remain pretty much the same no matter what structure we have generally discussed. Is that a fair thing to say?
 - ❖ I think that is generally correct.
 - ❖ Are there any other comments or questions with respect to ethics?
 - ❖ We really appreciate your presentation and your insights in this area. I am sure that in our November meeting we will have more concerns that will come up and certainly any recommendations along these lines will generate a lot of feedback from the judges. We hope to keep you involved.
 - ❖ I am happy to look at the information from the other states and give you whatever input I can.
 - ❖ That would be great, especially since you are doing statewide ethics training for all of our judges. This would be something that is a concern to them and I'm sure they would be asking you about as you conduct your ethics training so it would be helpful to keep you involved in all of these issues.
 - ❖ Any further questions or comments?
 - ❖ Thank you very much for joining us.

Model for Appointment, Evaluation, Discipline and Termination of Chief Probation Officer

- ❖ What language do we want to use? Presiding judge and board of supervisors or the generic courts and counties?
- ❖ Counties generic
- ❖ The next one above it the trial court presiding judge's responsible for some things, but may get recommendations from the county, again county generic. Appropriately so because it could be in some cases the human resources director, risk management, county counsel, the board of supervisors, etc. depending on the issue you are going to get input from the county as the county deems appropriate. The next to the last bullet, evaluations jointly by the court and the county then it says judges and board of supervisors. I fundamentally find that a major flaw. If you want to substitute for the court, judges, or if you want to substitute presiding judge that is fine, because ultimately the presiding judge is the one that ought to be doing it because he or she is the appointing authority for the department head. But with respect to the county I think it is to be left generically county for the same reason that the other two are. I can further elaborate that in any county, general law or charter, there is from a minimum of twenty to a maximum of thirty department heads probably of which half of them are statutory, which means ultimately the board of supervisors is the appointing authority even if they have delegated to the CAO, the board is going to somehow ratify it as the appointing authority. But in none of those statutes does it reference the board doing evaluations and in all cases, except Denny's because they don't have a CAO, the counties have by ordinance assigned the day to day responsibility for management, insuring board policies are adhered to, etc. etc. to their county executive, chief administrative officer, whatever the title is. And if we by statute require the board of supervisors to do the evaluation, which I would argue places the probation officer who is not appointed by the board above all the other department heads who are appointed by the board which is a problem, you have created a fatal flaw because three, four, five years downstream when the presiding judge wants to take some action against the probation officer and the board will delegate this regardless of the statute because we see how counties now are ignoring the statute and judges are ignoring the statute. They will delegate it to the CAO and it is not a problem until it is a problem, but when the presiding judge wants to take action against the chief probation officer and they have the consultation from the county the chief probation officer can legally challenge it because it did not follow the statutory requirements for progressive discipline and evaluation because technically the two supervisors did not sit in on each and every evaluation. I just think it is ultimately a fatal flaw. It violates all the public administration theory that I stand for and doesn't recognize any ordinances throughout the entire state. It can be solved simply by deleting the word "board of supervisors" as you have on the other two and simply say the

evaluation is done by the county. And if the board of supervisors in any county want to do it, they do it. It's ultimately to be decided I think at the local level. That is my concern.

- ❖ Is there a problem with just putting court and county for purposes of parallelism?
- ❖ No, court and county is fine with me.
- ❖ Do courts have an issue with it saying courts and then that determination would be made locally?
- ❖ I think the concern was more on the part of the chief probation officers.
- ❖ Chief probation officers apparently don't want the court executive in there and that is why the presiding judge is there. That is not my business. I'll stay out of it. It's between the court and the chief probation officer but if you want to leave it court and county generally that is fine, if you want to leave it presiding judge and county generally that is fine.
- ❖ I just think from a drafting perspective it would be cleaner to say court and county but that is a detail that can be worked out.
- ❖ The suggestion is not to specify the board of supervisors, but to say court and county.
- ❖ But you don't want to make that change in terms of the hierarchy.
- ❖ I'm telling you right now if you leave it in the way it is, I'm going to a CAO meeting next week and you will have 55 letters from 55 CAO's opposing it. It is not going to work.
- ❖ Hear me out, you want to change that for consistency purposes but you don't want to go to the next level and have the nomination process.
- ❖ No, the nomination process I actually think in that context in the appointing process you should have board of supervisors. I think the nomination process for political reasons, I think the board is going to want to be involved in that whether it is paper screening or oral panels, things of that nature. I think the board is going to want to do that and that is good, I'm not opposed to leaving that general either.
- ❖ I don't care. I was just a concern expressed by the chief probation officers that the evaluations should be from people with co-equal status in each of these.
- ❖ That is a bogus issue too. I don't care who the probation officers want to evaluate them. It's not their call. And I'm not saying the CAO is a co-equal to the presiding judge because that is not the issue at all, it is who is the appointing authority, which is the presiding judge. That is the person who should do the evaluation. Who is the chief manager day-to-day oversight person for the entire county including the department heads that have 10 times the size of the budget and personnel that the chief probation officers do. That is the CAO. It is not the supervisors. They don't have the information gained from everyday oversight, they don't know how the chief probation officer meets the rules and regulations, meets agenda

- deadlines, files the proper quarterly reports, etc. etc. I can do all of that work and my staff can do all of that work and give it to them, but are they going to be able to sit down face to face and go over those deficiencies?
- ❖ I think the other key issue is that you have to recognize that no individual member of the board has any authority. We only have an authority when we sit five people on the dais. And three of us agree on something.
 - ❖ Quite frankly, you are right. I have been evaluated four times and each time it has always been by a CAO.
 - ❖ The board is not in a position to do that and we do not have the authority to do that. We quite often have to remind chairman's of the board that they don't have the authority to do anything other than run the meeting and sign documents that are authorized by three other people.
 - ❖ I think it is important to recognize that two supervisors making an evaluation really have no authority to do that unless they have discussed it with the full board in an open session and are authorized to do that.
 - ❖ Which is another issue. If the board now establishes a standing committee of two supervisors to do this, it is going to be subject to the Brown act and you are not going to be doing it in closed session. Plus, as a practical matter regardless of the statute it is going to be delegated to the CAO. If it is delegated to the CAO it will be a problem the first time the presiding judge wants to take an action against the chief probation officer.
 - ❖ Is there strong opposition from probation if we as I understand it just leave off the word board of supervisors and judges and just leave it court and county.
 - ❖ I think that the chief probation officers think it should be the presiding judge and the county. If the county wants to have the CAO collaborate on the evaluation with the presiding judge, that is fine.
 - ❖ Presiding judge should be left in.
 - ❖ Are you evaluated by your board?
 - ❖ All five.
 - ❖ They bring you in.
 - ❖ And the county can do that. If we leave it just county and they want to do it in closed session for a personnel evaluation, which is how we do the CAO and the County Counsel, that is fine.
 - ❖ Norma is just pointing out that there will be strong comments from chief probation officers with respect to county, so we have a couple of options. One option is that we draft this and send it out by email to everyone and then get feedback and ask you to please get feedback before we actually send it out for comment. Liz and Audrey will work it up and then email it to all of us for comment, changes, revisions, we can do a conference call if we need to before it goes out to everyone for comment.
 - ❖ I think that Mike makes a good point. I'm a chief and I represent the chiefs obviously, but personally, I think you make a good point when you say I

don't think there is any way we are going to tell the board what they can do in representation of who they send.

- ❖ The concern of the chiefs when you say county is that the CAO or the board could get turned over to DHR to their director of general services or the director of parks and recs.
- ❖ No.
- ❖ But see we don't have any guarantee that the no from you is going to be the no from the other counties.
- ❖ But, you are carrying it to the point of ridiculous. The CAO is by ordinance or by charge in general law counties, the person that is responsible for the day-to-day oversight. It's not the director of parks and recreation. Why would the director of parks and recreation be charged with the responsibility of evaluating a department head. I don't even understand how that comes into the play of things. When I do evaluations I get input from the director of HR, the county counsel, affirmative action officer, budget analyst, and anybody that might have something to say about how this department head functions as a manager. I get input but then my office does and I do the evaluations for the department heads.
- ❖ I'm just telling you where the chiefs are coming from. When you use the generic term county, what does that mean? That is why in the document that we produced it says that the board of supervisors and courts.
- ❖ But then if you leave it the board of supervisors, it will be delegated and when some action needs to be taken, the chief probation officer will sue and say that we didn't follow the statue. Go back to square one and start over. If that is what the chief probation officers want because it is a job guarantee, then that is what you are buying but it is not going to be supported by the county.
- ❖ Is the goal here to have a single process statewide that all counties and courts must follow or is the goal to set up the parameters by which we are going to have this cooperative shared relationship?
- ❖ The goal of what we are talking about here is the default model. The first recommendation is whatever you are doing now that works, memorialize it on paper. That is your MOU. If you can't do that, then this is what you must do. This is the floor.
- ❖ That is what I am trying to understand because if the goal is just to provide local control, you clearly would move towards the terms court and county. If you are looking at a mandatory statewide, that's the way it is for everybody regardless, then you are going to get into that level of specificity by saying pj and boards of supervisors. I don't know ... what is the direction we want to go.
- ❖ This is for those people that can't figure out in the interim how to do it and our hope is that we have got 50 counties that are already doing it and work fine. They are just going to put that down on paper and that is going to be

- their MOU and they are going to file that and go forward. Those other 8 counties that can't find a way to work it out are going to follow this default by statutes. If you guys can't figure out how to do it on your own, then this is how you are going to do it.
- ❖ If I understand the issue at that point, then the fifty that are going to come to some agreement, may continue to have the system in place that they chiefs don't like.
 - ❖ Right.
 - ❖ What I am trying to get to in terms of the chief's position is a new system.
 - ❖ But I think as far as what you missed in the conversation yesterday is Judge Ochoa's point that if we come up with a solution to this big issue that is a solution, then we are done. We all go home. The problem is solved. The interim step is not supposed to solve the probation problem. It is only supposed to get to a point where we can continue to function and resolve Riverside and San Bernardino's problems and any of the counties that are in a loggerhead right now. We don't intend that this will solve probation's problems by any stretch of the imagination.
 - ❖ However I detect that that is what we are trying to get to in this debate about who is going to do the evaluations. It sounds like we are trying to put a new system into place.
 - ❖ Only for those counties that can't agree.
 - ❖ This is an overlay to the existing system with checks and balances on the presiding judge's authority.
 - ❖ Where are the chiefs if we go back to this idea that it is an interim solution, the poison pill if you can't come to an agreement.
 - ❖ The idea is that we'd like to make the default position objectionable to all groups so that they will work together to solve their problems.
 - ❖ By leaving the county the flexibility to designate those individuals to conduct the evaluation which in practice usually involves the CEO or CAO. The objection by the chief probation officers is that they would like to have members of the board of supervisors involved in the evaluation process but something to keep in mind with that is the point that you raised yesterday, because of term limits members of the board are changing on an ongoing basis so realistically if you are a chief probation officer for longer than the term of that particular person or people, you are going to have different people coming and going. Those members are going to be relying on the CAO/CEO who is going to be getting information from a number of sources to do your evaluation. So, is this really something that you see as a critical issue, just leaving it county at this point and letting the county determine how they are going to do the evaluation. If there are two members of the board of supervisors in the selection process, remembering this is a default mechanism for those counties that can't figure out what they want to do.

- ❖ How about “in consultation with the board”?
- ❖ We can wordsmith this to work. The reality was that we were given the same document that was sent out to everyone in the state which had two and two, three and three, and so we worked off of that basic model and what we did was refined it and gave it more specificity so if generically we could say court and county and that is what we need to have uniformity throughout the state, and Bill, John, Norma, Paul would you agree?
- ❖ But that isn’t uniformity throughout the state.
- ❖ That the courts and the county will make the selection of the chief probation officer?
- ❖ It’s only going to be in those counties that can’t agree. That is what we are forgetting. This is only going to be in those counties, hopefully 5 or 6 of them that have not got a working arrangement that they can all live with until we get to our final solution which is our final recommendation.
- ❖ And that has not even been presented to the chiefs.
- ❖ Yes. This was yesterday.
- ❖ This is new.
- ❖ The original response to the recommendation that Audrey presented to us when she came to our meeting in July and the comments that you received weren’t specific enough at that point, when we were talking about county and court. The chiefs felt that they wanted consistency, with two members of the bench and two members of the board of supervisors. I think that if this is presented as a default position for those counties, hopefully just a small handful, that can’t decide on a process that works for them, I think you will get a far different response.
- ❖ And I think that maybe we didn’t back up far enough to let them know where we were on this. We decided that everybody unanimously kind of hated what we sent out. So we also said, if that is the case, maybe that ought to be our default. So everybody would work towards solving it on their own so that they didn’t have to go to the default.
- ❖ Shall we leave it court and county or shall we leave it presiding judge and county? What is the consensus?
- ❖ The only thing that I will offer also as a member of the chief probation officers is the fact that the chiefs wanted the presiding judge to be involved in the evaluation process.
- ❖ So why don’t we leave it presiding judge and county?
- ❖ I think that is appropriate.
- ❖ I’m not going to object to what he said in terms of the county. I think that is possible. I wouldn’t want to see the management analyst doing my evaluation. I would want the CAO to do it, and I’m not even sure that you don’t want to say the CAO so that there is not a misunderstanding that the parks superintendent is going to do my evaluation. That the management analyst is going to do my evaluation.

- ❖ Then you get into Glenn County, that doesn't have a CAO and that is why you don't want to go into the specificity.
- ❖ But there you have the board members doing it.
- ❖ That's right.
- ❖ In San Diego it is the board and the CAO.
- ❖ You could say by the court to include the presiding judge and the county. That would address your concern. You have the presiding judge involved. I don't know if you want to say that in the nomination process. It says judges now. But the court to include the PJ. You have the PJ in all levels so it is clear that the PJ is involved in all levels.
- ❖ They have the hiring and firing authority in this scenario.
- ❖ The one thing that I have a concern with in listening to the chief probation officers over the many months is that they do not want to be evaluated by the court administrative officers. That is something that is very important to them. They feel that the PJ should be the one that does that evaluation, not the court administrator. I totally agree with them on that. I'm not faulting any court administrative officer, but there is some that feel that they are the boss of the CPO and I don't agree with that at all.
- ❖ So if you put to include or including the PJ at all junctures, that addresses your concern. It involves the PJ. In most counties the PJ is going to be involved and want to be involved and will be the leading force in this.
- ❖ I wouldn't put it in the first step because a presiding judge may want to let the juvenile court presiding judge and the criminal court judge that has a lot of contact with the chief probation officer do the screening and the recommendation to him or her.
- ❖ Then if you put it in everything after that, it addresses the chief probation officer's concern. It leaves the county free to involve whoever they want in the evaluations and that insures some predictability in terms of hiring evaluation and any discipline decisions.
- ❖ Any further comments on that?
- ❖ Any other suggested changes or revisions in the temporary legislation.
- ❖ The plan on this is Liz is going to start working on this. Audrey is going to Hawaii next week, when she comes back, they are going to talk. Liz you are going to communicate with Rubin?
- ❖ Yes.
- ❖ Could you also communicate with Supervisor Tavaglione? He is Riverside County. Then we are going to see something via email that we are all going to review and work with back and forth. If we need to have a conference call, we will set up a conference call. If not, usually everyone sends their comments to Liz and Audrey and then they confer, and we confer and we send you out something else. I feel very confident that we will be able to reach resolution on this. Then our plan is to send it out to all the same people who saw our other model that everybody hated so much. We will

- say that we have listened to what you have said. We have taken into consideration your thoughts. Here is a revised model, please comment with a short turn around time. Then we are going to discuss the comments that we get back at our November meeting. We will still have time in November. We will talk about that on our first day. That will give everyone time to go to their respective groups, run it by the individuals that need to approve it and take it from there in order to get into this legislative cycle.
- ❖ And that will occur in October and the November meeting.
 - ❖ Then your friends will write you another letter.
 - ❖ And they will say this is better. You are closer.
 - ❖ Just think, Justice, your name will go out on the better model, too.
 - ❖ Can this go out under somebody else's name?
 - ❖ When we send this out, are we going to hint at or allude to the fact that we are developing the ultimate recommendation for a statewide model.
 - ❖ I think we will send it out, I thought that the introduction that was done on the last one that we sent out that I know Liz and Audrey worked on very hard, explaining sort of what we are doing, we might add a few more sentences that we are working on a long term recommendations and pending those recommendations and implementation of any of those recommendations, there is need for temporary legislation to address the status quo which is basically the probation officers working in the courts, being funded by the county.
 - ❖ But not hint at what ..
 - ❖ I'm just wondering if ... It sounds like the court folks, the county folks, and the probation folks have a level of comfort with this because we are moving in that direction and I'm wondering if that might affect the people we are sending this out to. If they know that this is where we are going. The legislature probably wouldn't but that is not who we are talking to. We are talking to chief probation officers, boards of supervisors, presiding judge, etc.
 - ❖ I think until we have consensus from the group on the long term recommendations it might be a little bit premature to send this out. June was saying and what Liz was saying yesterday in terms of the legislature and or counties that see this and see dollar signs all over, it might raise resistance to even short term legislation.
 - ❖ I think that is a good point. I originally thought that yesterday.
 - ❖ Is that agreeable with everyone then? We will see this again. This is short term legislation which may become fairly long term with respect to the implementation of the recommendations that this task force makes.
 - ❖ So the first draft, we will delete the reference to the board of supervisors but include specific reference to the presiding judge?
 - ❖ Yes.

Long Term Governance Model

- ❖ We are just sort of going to outline what we are going to be doing in November and I'm going to ask for suggestions on the information we may need. I think we have completed a lot of our work and we are close in a lot of other areas, so the remaining issue that we have is long term governance and it sounds like we have some consensus on probation employees that work in the courts and out in the field, we are working on facilities and that is what we will be working on, all of those issues, in November.
- ❖ My first question was do we have a list of all of the facilities that we are talking about in the 58 counties?
- ❖ No.
- ❖ Could we through the chief probation officers put together a list of all of the facilities that we are talking about in every county? The names of the facilities, the addresses, the descriptions, etc.
- ❖ The board of corrections has all of that information.
- ❖ Do we want to consider at our next meeting the facilities that we are talking about?
- ❖ Yes we do.
- ❖ How many, where are they located, how many beds, how old are they? As much information as we can get on all of these facilities. At the first meeting that we had with a lot of people who didn't end up on this task force but were sort of the thinking group behind the task force, I'm in this room with all these people most of whom I have never met before and there is this big debate going on and I'm sitting there with no comprehension of what it is we are undertaking and there is this big debate between "oh, we can't talk about facilities", "we are not talking about juvenile hall", "there is no way we can talk about facilities" and someone else was saying "how can you not talk about facilities?" I'm sitting there thinking, Ok facilities. Now here we are two years later talking about facilities, we are talking about how many beds, etc., so we need to really understand what facilities we are talking about so if a judge in Solano County says that we cannot take over the facilities, we can say you have "x" number of facilities, "x" number of juveniles, generally your population in the facilities is "x" you are charged with the responsibility to inspect these facilities, how often are you going out to inspect the facilities?
- ❖ But your report from the board of corrections will not show that because it is under construction.
- ❖ Anything that is under construction with state or federal dollars attached to it, they know exactly what it is.
- ❖ Can we get a list of standards from the board of corrections that are already in place?
- ❖ Yes, 1524.

- ❖ Do we know how many employees work in the facilities and how many probation department employees work in the courts?
- ❖ BOC has that information as well in the staffing plans.
- ❖ We want to know from the chief probation officers, in your county how many probation officers do you have, how many work in the courts, how many work in the facilities.
- ❖ You can do that on a county by county basis also.
- ❖ The BOC wouldn't know the particular assignments, they would know the institution stuff. But as far as assignments to court or who's doing supervision that would have to go county to county.
- ❖ Actually the BOC would have that too, because under all of our STC training plans every county has to list how many people are going through core training annual training by institution and field services.
- ❖ That is true, but they won't know if they are in court services compared to supervision.
- ❖ Yes they do. They list them out.
- ❖ I guess what I'm suggesting is how would we get a budget for each probation officer, what is the county paying now, so that we can look at for 58 counties, what is the budget for Solano County, how many probation employees are there, how many work in the court, how many work in the facilities and how many other employees are there for probation.
- ❖ From county to county.
- ❖ Why doesn't a letter just get sent out to CAO's?
- ❖ Let me back up here, when we first started wasn't there a survey that went to every county administrator, probation officer, .. in terms of listing out what is the budget for your probation department.
- ❖ We did that and we got information back but it was disputed as to its accuracy. There is also the salary survey and then each department has an annual budget that I did receive. I know there were some concerns as to whether it contains the complete budget for each department. We have been talking for the last two years about the need to do a comprehensive look at the finances of probation and it is more difficult than it would seem. It is not just a line item for probation in the county budget because a lot of the costs are contained in other departments or grants. It is not as easy as just adding up the line items.
- ❖ What we need to decide is what information you are looking for. When we did that survey that is just what we did. Matter of fact, I sent you a breakdown, not only by general fund dollars, but every single grant we had, 4E streams, 10F dollars, and we broke that down into minute details and we were going to use that as the guide to have other counties send in what they were getting in funding. There are so many different streams you can go after just depending on your creativity and your desire.

- ❖ Can we retrieve that information and would it be helpful for our November meeting?
- ❖ It would be helpful but we cannot retrieve it. Our AOC finance division is planning on coming to the November meeting and giving a presentation as to what sort of survey would need to be done. We have looked at this over the past two years and they estimate that we would need to hire a consultant that would probably cost a half billion dollars. It is a very expensive survey based on past surveys.
- ❖ In the meantime we can certainly get the county's budget and see what the county is paying for probation.
- ❖ It's readily available from the county's from what we submit to the state controller, the problem may be how it is handled county by county. I don't know if that is a big deal or not.
- ❖ Are you gathering this data, I guess I'm asking the question why do we need this for the November meeting?
- ❖ Well, we may not need it in November but if we make an overall recommendation to take over the facilities we need to know how many facilities we are talking about, what the populations are, what are the responsibilities that you are assuming, how many probation employees are there, how many work in the courts, what is the cost, what is the state going to be on the hook for. And, then if you are going to eventually recommend the assumption of responsibility for those in facilities, the cost. I don't think we need hard dollar figures but we need to know what are the counties paying now, how many employees are we talking about, what kind of a budget item is that, with the thought that a lot of the information may not be retrievable at this point with the resources that we have now, but it could be available because that also goes to a stable source of funding in terms of all of these grants that come in and dry up.
- ❖ That is the big issue. The unstable funding that is associated with it. That it changes so dramatically even within a given year, that you wouldn't get a clear picture over probably a six month period of time.
- ❖ But at least we can get the beginning information.
- ❖ You can get a ballpark figure just by looking at the county budget and the fiscal details. That will show you where the bulk of it is. You might miss a little bit here and there, but you would sure get a ballpark figure of what you are talking about for the cost of probation in the state of California.
- ❖ So we will try to get those figures. Maybe you can work, Audrey, and try to retrieve whatever information is available.
- ❖ Bill and I were just talking and maybe that is how you do it. You do a first step. Then I do think there has to be a more detailed analysis of what specific services are associated with those figures but that I don't think is possible by November but I think perhaps the first step is workable.

- ❖ If you could give us a feel for what you feel we need, you could turn it over to our business managers statewide and they could work with Liz to produce the document giving you whatever information you need. They manage their individual department budget. And they have an association that we support 110% and Norma knows the current president so Norma would be the person to go through in order to work with the president.
- ❖ Absolutely.
- ❖ All we need is a ballpark as a starting point. Right now we are talking philosophically, many of us that are not intimately involved with facilities about costs and assumptions of responsibility and as Mike pointed out this is quite a monumental recommendation that is being considered.
- ❖ Okay we probably also want to hear from, Audrey was telling me that Rubin is the expert on this and members on our board, as we move along we will be talking about at our next meeting this interim piece of legislation and a lot of concerns have been raised with respect to the present model and will be raised with respect to this model about the Brown Act and application to the Brown Act. I think it would be really helpful to at our next meeting, to probably first start by going over this, and then maybe move into a discussion of the Brown Act and when it applies.
- ❖ I think the Brown Act is pretty simple. It is real basic. If you have got two people on a standing committee, you have got a Brown Act committee and it has to be open and noted. If it is an ad hoc committee, it doesn't apply.
- ❖ What if you have got two members of the board of supervisors doing personnel interviews for a department head?
- ❖ If it is a one time shot, ad hoc. If it is a standing committee that is set up to meet on an ongoing basis, it is a Brown Act committee, you have to notice it and you have to have public information. It's not real complicated.
- ❖ I think it may not be real complicated but I think it is important that the task force consider it since so many people have raised it as an issue. The judges are going to raise it too. There is an ongoing effort right now to access all court records and/or a request to have all court records put online. This is sort of, now that we are so technologically advanced, there are and there have been concerns about judges meeting in terms of making personnel decisions and/or discussing policy in the application of the Brown Act. The judges are becoming quite concerned about the Brown Act and it's application and while there may be a very simple answer as you have just pointed out, I think it is important that the task force look at that and say yes, we have considered this and in terms of the application to the Brown Act under the default mandate it is an advisory opinion only but based on our consultation with lawyers and those who come within the Brown Act, the task force believes that the Brown Act would not apply in this situation.
- ❖ If we were to make a recommendation that the Brown Act would apply to the legislature, then we could all stop worrying about it.

- ❖ That would be the end of the Brown Act.
- ❖ There is a quest ongoing to make all meetings open and have public at all meetings, have all judicial policy meetings open, to have all of our records open, and I think that is ongoing and will continue. I think to the extent that there are concerns that have been raised, we really need to discuss it, address it, etc.
- ❖ Who is pushing that?
- ❖ The newspaper publishers and the first amendment coalition.
- ❖ It has to do with the Brown Act and also the Public Records Act.
- ❖ Senator Burton carried a constitutional amendment to elevate to enjoin in the constitution the public's right to access governmental records. There was a lot of discussion as to whether it would extend to judicial administrative activities, not obviously courtroom proceedings, but there is an enormous amount of pressure. This is not going to go away.
- ❖ Some judge ruled against the first amendment coalition so they went to the legislature.
- ❖ A few years ago, there was some Act that required that we keep minutes in our closed session and that they were in fact subject to disclosure. It didn't go anyplace.
- ❖ The discussion about that. If they could get it they would love it but so far they haven't been able to get it.
- ❖ The last thing you want to do is keep minutes at your closed session.
- ❖ If it is written down somewhere, someone will figure out how to get it.
- ❖ Okay, so the Brown Act and maybe Rubin could address that and maybe we can get copies of the Brown Act to pass out.
- ❖ What information or presentation or research would you like to have done with respect to what other states are doing with their probation departments and their facilities? Do you want to go back and revisit those states that we have already looked at with a brief presentation on Arizona and other states that have assumed responsibility for facilities?
- ❖ I think we have enough new people and those of us that were here may need a refresher course.
- ❖ Yes, it has been a while.
- ❖ If we can get an overview of the state models that exist around the country.
- ❖ Who should do that? Who should make this presentation?
- ❖ I would only want to see the ones that are working. I don't want to hear Texas come in and tell us that they have been at this for 8 years and it is a piece of crap. Iowa and New Jersey, I want people to come in where they have put together a plan that is working.
- ❖ Is there somebody from the American Probation Parole Association.
- ❖ We will probably want to be aware of all states that have assumed responsibility for facilities and probation officers so that we can review that and then we want to particularly focus on the ones that have been

successful and why they feel that they have been successful, why it is better for probation, county, courts, and the probationers. Audrey ..

- ❖ Do we have a contact at APPA?
- ❖ That is what Audrey was just saying, Carl Wickland, their executive director spoke at our first meeting and prepared a national white paper. We may be able to bring him out or someone from his organization. I will look into that.
- ❖ I would hate to spend a lot of time on that because I think we have dealt with that and put much of that behind us. I understand that there are new people that have joined us and certainly we should be refreshed as to what the conversation was, but if we are spending an afternoon doing that it is a waste of time.
- ❖ Yes. Maybe between Audrey and Liz, we can go back and look at what we have looked at and maybe between the two of you, you can present what we have already looked at and if we feel that we need additional insight, we can communicate that before the next meeting. Let's go back and look at what do we have, what do we need, can we do it ourselves or do we need to have somebody come in.
- ❖ We have a lot of materials from each of the states that came in.
- ❖ We will look at our facilities our probation departments, numbers of employees, ball park estimates of budgets, we will look at the Brown Act, we will look at all states who have assumed responsibility for probation department and or facilities, how they are doing and how successful they are, we will look at and determine whether or not we need anyone to call in by way of conference call if we have questions as opposed to bringing somebody out to present to us. Mike Roddy is going to talk to Sheila and Bill with respect to the AOC perspective. What are the concerns or roadblocks or questions to address? We want to hear the judicial perspective. It's the judges who have been most concerned about any further assumption of responsibilities. What is the best way to do that in terms of presenting the judicial perspective because while I think that Judge McCarthy and Judge Ochoa have expressed that this is workable, most of the judges that I have talked to and heard from particularly in large counties have particularly strong feelings against this proposal. I think it is important that the task force hear a judicial perspective concerning why this will not work and I suspect a lot of it is that they haven't spent two and a half years looking at all of these issues like we have and a lot of the issues that they feel are issues maybe are not insurmountable issues. I think it is important to consider the judicial perspective. What is the best way to do that?
- ❖ Los Angeles has strong concerns.
- ❖ I have a couple of calls in now so I definitely will be able to better articulate that and I can make some additional calls if you want to designate

specific counties. To talk to the juvenile presiding judge in Riverside, San Diego, wherever.

- ❖ I think that would be very useful. Big issues have been southern California in particular LA and I would like to hear those issues and let them know what direction we are going here.
- ❖ I think that would be good. If you could sort of represent the southern California perspective and to the extent you want to contact other presiding juvenile court judges and then maybe Judge Ochoa, you are tied into the middle counties and to the extent that you would like to call on judges in those counties.
- ❖ Fred Horn .. could you maybe call Fred Horn to get the northern perspective.
- ❖ Who are the dual chairs of the Family and Juvenile Law Advisory Committee?
- ❖ Judge Nash from Los Angeles, and Judge Grilli from Santa Clara.
- ❖ Judge Brown, would you talk to Judge Nash. He is the chair of the Family and Juvenile Law Advisory Committee and the juvenile PJ.
- ❖ I already have a call in to him.
- ❖ That would be perfect. If you could represent the southern perspective, Riverside, San Bernardino, Orange, whoever you feel would be appropriate. If Judge McCarthy will talk to Judge Horn from the Presiding Judges advisory committee and or other northern California judges. Maybe some of the smaller counties, as well.
- ❖ If Judge Ochoa could cover more of the central counties, Fresno, counties like that and sort of lay on the table what the committee is considering, what are the concerns, what are the problems, what are the roadblocks, then they will really feel like we are considering their views. We will have the judicial perspective.
- ❖ What about the county perspective?
- ❖ Do we need additional presentation?
- ❖ I think they have been represented quite well.
- ❖ Basically, is there more from the counties that we should be considering in terms of assumption of responsibility by the courts of the employees. Remember, there is Judge Jahr's proposal still, we will be discussing that, there is still the proposal of the counties maintaining responsibility for the maintenance of the facilities and not transferring. There is one that has been discussed transferring all of the facilities to the courts as they are doing now. The other one is to have the counties continue to maintain the facilities. As I understand what is happening now with the courts is not all of the facilities are going to the courts. There is a transition period. Some of the facilities are shared.
- ❖ Is there more from the county? Do you want to explore that between now and November. We will put that on the agenda, the county perspective on

- maintaining responsibility for court employees and buildings, transitioning only the employees, transitioning the employees and the buildings. The county perspective on that. We will leave that up to all of you.
- ❖ What about the chief probation officers perspective, line officers? What about their perspective on being employed by the courts now as opposed to being employed by the county? I was thinking that probably most of the users of our courts probably have no clue who pays the probation officers and probably many of them think already that the court pays the probation officers because they are in the court and they are writing reports. From the perspective of the user of the justice system, they probably don't know and if you ask them, they probably would say that those that work in the facilities get paid by the county and those that work in the court get paid by the court.
 - ❖ They actually think they all work for the city anyway, and they don't care.
 - ❖ They don't know and they don't care.
 - ❖ The majority of the people think that everyone in the courts are still county because the court says Solano County courthouse. They look at us as one big family whether we are separate or not anyway.
 - ❖ So, maybe the chief probation officers can think about that and we can put that on the agenda for November. Any additional information and issues that you would want us to consider. And then from the line perspective are there any issues that should be considered in terms of the transition to the courts. Understanding what we discussed yesterday that you would not lose any benefits. New hires would be subject as new hires are under any system.
 - ❖ Is there anything else we need to put on once we have covered the AOC, the judicial perspective, the county perspective, and the probation perspective?
 - ❖ Any other issues that you want to hear about before we move into the final discussion of the long term governance model.
 - ❖ What other issues do we have, Audrey, which we need to discuss in November.
 - ❖ Qualifications of the CPO, we were going to have our finance division talk about the survey in terms of what it would take and what we would want to get out of it, that will probably be a half hour presentation, whether or not we want to talk more about the employee issues as a committee ...
 - ❖ I think the employee issues hinge on several things and one of the most important ones, I think we kind of addressed yesterday, at least from my point of view, in regards to how you handled it in trial court funding and how it has been handled in trial court. I think that was fairly satisfactory in terms of the process that would occur. That bargaining agents would maintain their bargaining capabilities. SEIU is involved in Fresno and teamsters is Santa Barbara, whatever the case may be that they maintain

- that, I guess. As long as that is understood because I don't think any of the union folks are going to be happy if we are only going to accept one union that is going to bargain for all employees.
- ❖ I think there is a perception with most line staff that they think if they become a state employee they are going to make more money.
 - ❖ Right.
 - ❖ They are not going to become state employees, they are going to become court employees.
 - ❖ No matter what you tell them that there is a statewide system, they will think that they are going to make more money. Whether it is true or not, I don't know.
 - ❖ We were talking about the possibility for lateral transfer. If you talk about a DPO in Solano County that maybe gets safety retirement, builds up four years or so and all of a sudden does a lateral transfer into San Diego. They probably will not only go up in wage because our base line for a DPO is 42K. So they would go from a mid thirty to a forty-two plus safety and three percent of fifty. So all of a sudden the state system becomes a very positive opportunity for your line officers, because the DPO ranks are generic. The Board of Corrections established minimum standards. Whereas Mike pointed out last night that he has a clerk typist III in Solano county that wants to transfer to LA and they may have entirely different job descriptions, not the DPO. They are very consistent.
 - ❖ But in the trial court employees as they are transferring to court employees as opposed to county employees, it is not a statewide system. It is whatever they negotiate with their court.
 - ❖ Aren't by and large those employees making more than their counterparts in those counties?
 - ❖ Yes and no. It varies.
 - ❖ That is going to be the same case in the counties. You have about 32 counties in the state that are under safety retirement for probation departments, so that means you have another 20 plus counties looking at that and going Wow I'm getting myself on a lateral list and going into another county with better benefits.
 - ❖ That is where you may find the opposition. From those counties that aren't safety because they are not going to want a large exodus of their rising stars.
 - ❖ Is that an issue that needs to be dealt with at this point?
 - ❖ Why can't they do that now?
 - ❖ I don't see how the pressure really changes because I don't see us moving to a statewide system where I think you go through the same process if you are a DPO in Solano County that wants to get a job in San Diego county. I don't think the process is going to be different.

- ❖ You are asking for employee issues. We see this as employee issues. If we want to leave it alone, we leave it alone. But you are asking us for ideas and that is one of the issues that we need to talk about.
- ❖ The process right now, I can't move to another county. I have to go through a testing process. Would this be a system where you just have an interview?
- ❖ No, the system would be the same.
- ❖ I would see this whole process as having no change whatsoever because the court employee in our county has no more standing to be a court employee in LA county than someone in San Diego county. They have to go through a recruitment, apply, and if they have years of experience that that county wants, then they will do the lateral transfer as compared to hiring someone without the experience.
- ❖ Then that is what we need to say.
- ❖ I think that if we go back to what we were talking about yesterday and that was a separate task force that dealt with those issues in the trial court funding process, the recommendation was just made to transition and then another task force was set up to deal with the actual transfer of employees.
- ❖ Then we need that committee for this one also.
- ❖ The only issue that counties are dealing with now is that court employees that are transitioning out of the court to come back to the county are trying to carry their longevity and seniority with them which ultimately may have impact on bump and grinds and some other things. Internally we are having some issues that we are debating, and there is a bill pending that would resolve that.
- ❖ Mike used the example last night where an employee transferred from one county to another, a senior employee retired, the payoff for that person was \$120,000 and the county's budget was \$1.2 million. It is a staff issue, I think what John pointed out was that where are staff going to be coming from. Is this a statewide system and if so does that mean I can go anywhere that I want? Then we need to deal with it.
- ❖ I don't think we can resolve that here.
- ❖ I think the best we can do is identify the issues for whatever working group.
- ❖ I'm not saying to resolve it. I'm just saying that it will come up and we need to be able to answer it when it comes up because it has already come up historically in probation. Years ago there was this rumor that parole was going to be transitioned into probation and so it started way back when. Now when they hear that they are going to be under another umbrella, the first question that comes up is "is there going to be more opportunity?", "am I going to make more money?", on and on and on. I'm just saying that it is going to come up.
- ❖ There is a recognition that there are all sorts of issues around the employment status but I don't think this group of 18 people will do any

more than identify what those issues are and as was said yesterday maybe this is a task for the advisory committee.

- ❖ I think those are issues that we need to identify and clearly identify them in the report. Those are ongoing issues for further consideration by whoever carries on the work and the recommendations implementation.
- ❖ We will be talking about employee issues. Other issues that need to be identified will be discussed at the November meeting.

Long-Term Governance Model: Creation of a Probation Services Advisory Committee

- ❖ The other issue that we will be talking about at the November meeting that really needs to follow upon the long term recommendations. A lot of these we can think about between now and then but until we have some resolution on the long term recommendations we can't really fit all of the pieces in. But there does need to be a probation services advisory committee statewide that continues in operation to implement the recommendations of the task force and continue the dialog the task force has begun and been involved in for the last two years. So we will need to make recommendations on the composition of the advisory committee, the structure, where it is located and how it operates, who should participate. Probably you would want judicial officers, members of county government, probation chiefs and line officers. Normally the advisory committees for the council have been primarily judicial officers involving other individuals depending upon the committee and its needs. Involving, attorneys, mediators, etc.
- ❖ On the various committees there are CHP and other traffic related offices, but primarily composed of judicial officers and some court executive officers. With the Fam/Juv it is primarily judicial officers in family and juvenile law however, we have probation representatives, attorneys in dependency, delinquency, and family law. It's specific people who have expertise in areas besides the judicial officers.
- ❖ How large are the committees?
- ❖ It really varies depending on their charge. I also work with the family and juvenile law advisory committee and that committee is 35-40 people. It's a very large committee but it is really a family committee and a juvenile committee that meet separately but occasionally meet together on crossover issues. Some of the other committees are much smaller. The criminal committee may be under 20?
- ❖ Normally it is 15-20. If it is the Presiding judge's committee, its 58 Presiding judge's and 58 court executive officers.
- ❖ But they have an executive committee that is much smaller.
- ❖ You can really accomplish more with a smaller number 15-20 is the norm.

- ❖ Our group is 18 voting members with a few advisory members, so you can judge from this group how much we have accomplished and how much we have gotten done. If you doubled the size of the group, what would happen? So, you need to recommend size and you need to recommend composition depending upon what long term recommendations are to be made. I think it would be good to start thinking about representation. These groups can always call in advisory members to help them on issues like budget, particular expertise.
- ❖ The way that the judicial council advisory committees are selected. They serve as advisory committees to the judicial council. This is a slightly different situation as they serve as advisory committees to the judicial council, all appointments are made by the Chief Justice. Three names are submitted to the Chief Justice for each position, and that is what we did for the eight judicial council representatives to this committee. For each position we had to submit at least three names to the Chief Justice, and then the Chief selects. That's how the judicial council advisory committees are selected. How are task forces selected?
- ❖ They are usually more typically like an advisory committee. Some task forces have been legislatively mandated and it has been set up in legislation like the facilities or court employees task forces. This group is unique in that it is a joint collaboration with CSAC and it is set up that one third of the members are selected by CSAC, one third by the Judicial Council and one third is representation from probation through CPOC and CPPCA. The Chief formally appoints all of you to this committee however, with the representatives from CSAC for example, only one name is submitted and the Chief appoints them. He has no say in whether or not that person is selected, where typically he does.
- ❖ So that is something we need to really think about in terms of ongoing advisory committee typically the judicial council advisory committees are set up and report to the judicial council and funded by the AOC. That's the other issue, the funding of the ongoing work. The appointments are by the Chief. All of those that are judicial council appointments there are three names submitted for every position. The Chief makes the final decision. Those of you who were appointed by CSAC and or by other groups, my understanding is that one name went to the Chief and he appointed that person. That is the way that works. So, think about structure, funding, and the work that we would expect to see to implement the recommendations. It might include a task force on court employees, a task force on facilities, on funding for those task forces. We want to see ongoing cooperation between counties, courts and CPO's. How to implement that goal? Then, any recommendation by this group that would affect the ongoing judicial council structure would be something that I am sure we would want to get input on. Maybe between now and November, Audrey, if you could work

- on that issue with Mike and Sheila. What kinds of recommendations would be workable recommendations in terms of an ongoing advisory committee. If you could work on that issue with the counties and with probation. In the beginning, the AOC did most of the funding and this year we are sharing the funding, so this is an unusual committee. We need to think about all of those things and then how many positions, who are in the positions, if there is going to be transition implementation to the courts if that is the long term recommendation, should there be more court positions than the others? How do you divide the positions and why. If you want the courts to assume responsibility what assistance will be needed and the ability to call in that assistance and the ability to fund that assistance. Those are all issues. And what advisory members would you want to keep involved on an ongoing basis. And what are the tasks of the advisory committee. Develop the standards and guidelines, what kind of expertise do we need for that, ongoing work in technology, ongoing work in educational areas, employee issues and long term assumption of responsibility. So there is a lot that this advisory committee will be looking at so how do you want to structure the advisory committee to achieve the implementation of the recommendations of this group and how do you want to fund it. Those are the basic questions.
- ❖ Can I get a feel for whether or not the AOC is interested or do they understand that that is a push of ours that we are going to want an advisory committee. Do you have any indication that AOC will pay for that.
 - ❖ I think there is definitely an understanding that an advisory committee is necessary in some of our areas. If it did look like this committee it would be a huge shift from traditional advisory committee structure. There is actually listed in the code who would be members of an advisory committee and typically it says at least one county representative, one court representative, and other members as necessary. We don't usually say as happened with this group, six court, six county ... that is not the typical structure and I think if we came back with a recommendation saying we want the committee composed of 18 people with "x" positions, that would not be in keeping with the typical way the council forms committees. Although I do think that there is a knowledge that we need to continue the work and an advisory committee is the most appropriate body but the mindset is probably a more typical judicial based advisory committee with input from other groups with expertise and particularly need to be there to continue the work but maybe not at the same level.
 - ❖ Maybe more ad hoc involvement.
 - ❖ Correct. And having advisory members sometimes having subcommittees involving others as well.
 - ❖ I think if you could do a lot of the ground work on that with Mike and Sheila, and if you could do a lot of the ground work we won't come in November and say this is our recommendation and then start to prepare a

- report that goes out and then have people say that this isn't workable. So if we sort of know in November what is workable, how can we structure it, how can we handle appointments, what's acceptable, is it acceptable to do this or not to do that, what is acceptable to the AOC, which is probably going to be funding most of the ongoing efforts, I mean realistically they have got the ability to do that. What is acceptable to the Chief. Those kinds of things. If you could maybe do a little groundwork on that then we will know what kinds of recommendations in terms of advisory work and
- ❖ One more point, with the funding I will have to look into whether or not there is funding in our budget to continue the work of this task force. I know that the state budget is very tight and in order to fund a new advisory committee we would usually have to draft a budget change proposal to support that group. We will have to look into that and into other monies within the AOC to shift some things around.
 - ❖ Then, be thinking down the road if anyone on this committee is interested in serving on the ongoing advisory committee it would make good sense, at least to me to have some of this working group on this committee in terms of implementation. We would hate to start new and begin the discussion again that we have been in for low these many months. So I think that is something to think about also. That will be on our November agenda.
 - ❖ Any other business we need to cover today?
 - ❖ We have accomplished an incredible amount both yesterday and today and have made great progress and people are going to be surprised to see our next recommended model come out. They will know that they have been heard. Their comments have been carefully considered, they have been heard and now we have another model that really does leave it up to local control and discretion and provides them with some assistance if they can't reach resolution in their county. I think most of the counties are going to be happy doing what they have been doing as they have been successful and so I think this will be a great assistance to the courts and the counties.
 - ❖ Any other business?
 - ❖ Meeting adjourned.